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US Judiciary: Judges From India

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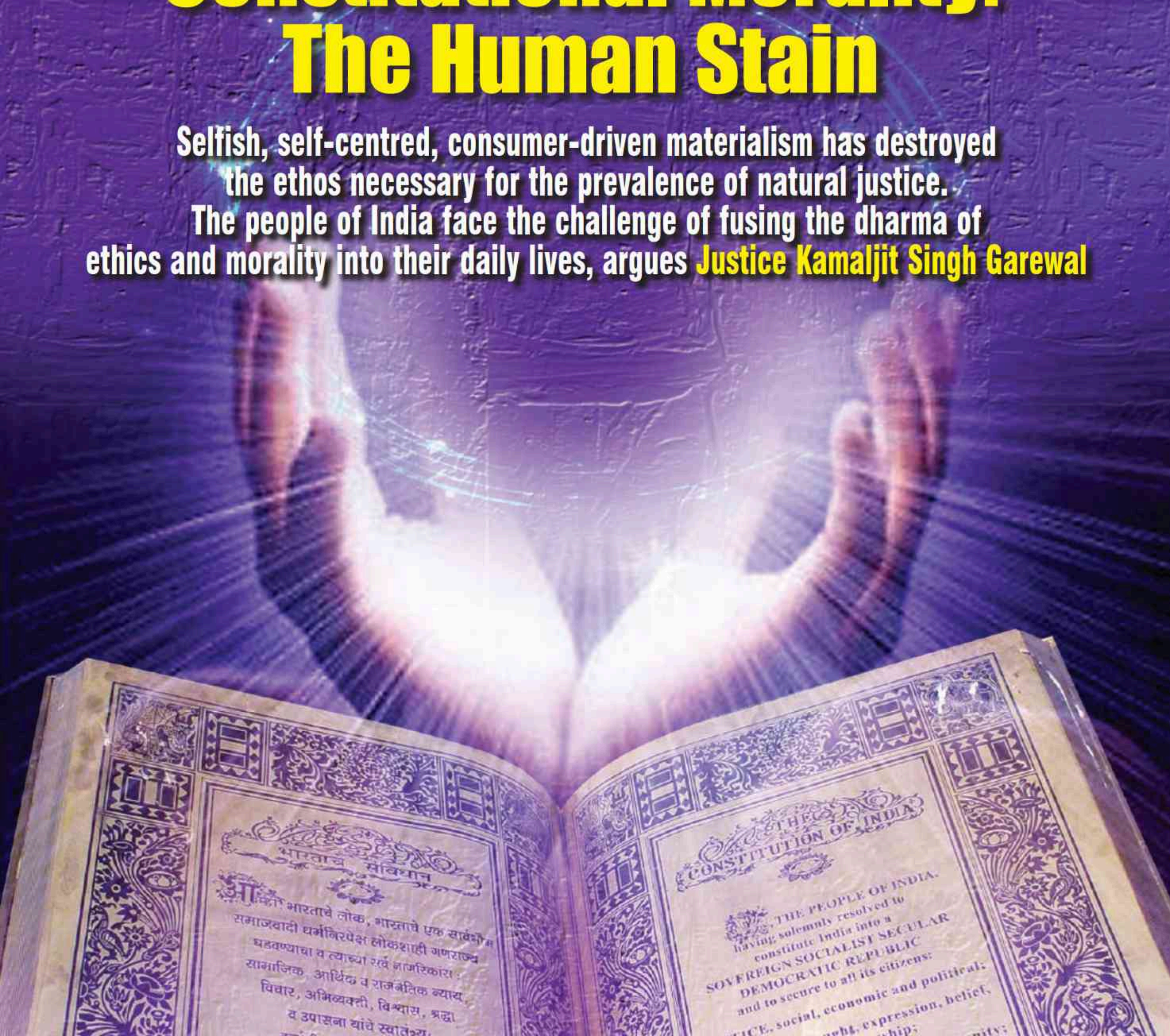
INDIA LEGAL

January 23, 2023 ₹ 100

STORIES THAT COUNT

Constitutional Morality: The Human Stain

Selfish, self-centred, consumer-driven materialism has destroyed the ethos necessary for the prevalence of natural justice. The people of India face the challenge of fusing the dharma of ethics and morality into their daily lives, argues Justice Kamaljit Singh Garewal



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Contents

VOLUME XVI ISSUE 11

LEAD

The Indian Ethic 14

Justice Surya Kant recently brought focus on the *Arthashastra*, which must be studied by those in public life. But its guidance cannot help much in governance if we lack ethics as often seen nowadays, writes **Justice Kamaljit Singh Garewal**

SUPREME COURT

Eating Order 18

The apex court recently passed a judgment ruling that the owner of movie halls or multiplexes have the right to regulate people from carrying any outside food or beverage into the theatres. It is a huge reprieve for cinema operators

COURTS

Tata to Wage Arrears 20

The Delhi High Court dismissed a plea of a section of Indian Airlines employees regarding unpaid wage arrears of Rs 208 crore. If disinvestment takes this route, will the prime State policy be in trouble?

All Creatures Great and Small 24

Petitions have been filed in various courts regarding "harm" done to non-human objects, be they dogs, cows, trees or rivers. Should they be seen as frivolous pleas which waste the court's time?

GLOBAL AFFAIRS

Two Judges from India 28

Two American lawyers of non-resident Indian origin succeeded in recent judicial elections in Houston, Texas. Both have their roots in Kerala

POLITICS

2 States 30

The six-decade-old row between Karnataka and Maharashtra can be traced to the States Reorganisation Act, 1956. Other states too are embroiled in disputes which are nowhere near resolution

SPOTLIGHT

Migrant Votes 34

The Election Commission of India says it has developed a prototype for a Multi-Constituency Remote Electronic Voting Machine which would enable remote voting by migrant voters. The move is long overdue

OPINION

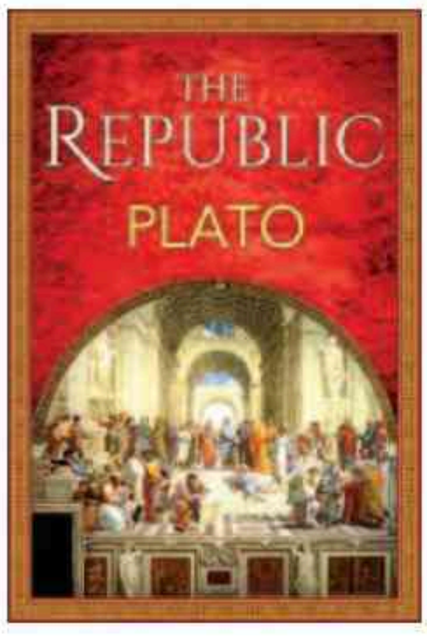
Unformed Civil Code 38

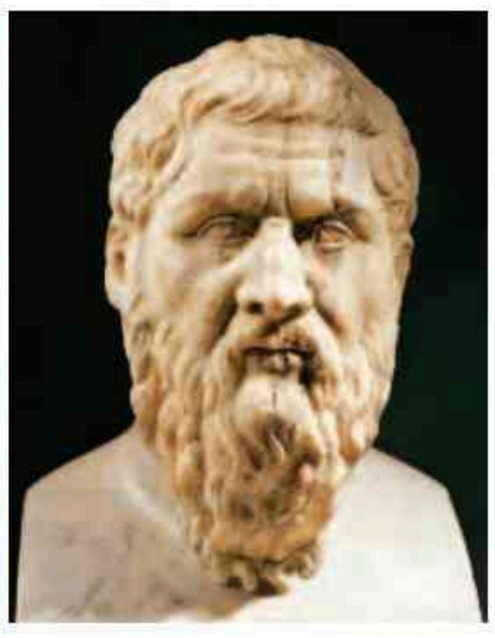
The concept of uniform civil code has been revived in recent times with a new bill which envisages the setting up of a committee to examine the issue. The code has enormous implications for religious minorities

PRIMA FACIE

La Dolce Vita 44

Will we reach the promised land if luxury leads the way? Have Plato's healthy cities become a myth? The stock markets are singing an old tune





REGULARS

Courts..... 6
Ringside..... 10
Is That Legal..... 12
International Briefs..... 48

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Took steps to curb money power during polls, ECI tells Supreme Court

The Election Commission of India (ECI) has apprised the Supreme Court that it has taken various steps to reduce the influence of "money power"during the polls and will continue to do the same in future. Vijay Kumar Pandey, Director (Law), ECI, submitted an affidavit before the apex court in response to a PIL seeking directions to curb excessive poll spending.

Stating that the central regulatory body was "seriously" concerned about the increasing poll spending by political parties, the ECI said it had introduced a robust mechanism to keep the election expenditure within the statutory limit prescribed by the Conduct of Election Rules, 1961.

The affidavit noted that to keep a check on excess or unaccounted expenditure by political parties or their members, the ECI has effectively enforced the Election Expenditure Monitoring mechanism since the general elections to Bihar Legislative Assembly, 2010.

The ECI said that time and again, it has adopted various measures to curb the menace of money power in elections and would continue to do so in future.

The affidavit further said that the components of extant monitoring mechanism included deployment of expenditure observers, assistant expenditure observers, video surveillance teams, video viewing teams, accounting teams, complaint monitoring and call centre, media certification and monitoring committee, flying squads and static surveillance teams.

The ECI added that apart from "expenditure sensitive" constituencies and pockets, which were prone to greater instances of corruption and excessive poll spending, other constituencies were also demarcated and kept under "close vigil" by the Commission.

The ECI requested the apex court to dismiss the petition as unmaintainable, since the prayers sought in it were "vague and half-baked". The poll body further questioned the sincerity and public spiritedness of the petitioner.

Delhi High Court permits Netflix to release series based on Uphaar fire

The Delhi High Court allowed US-based production company Netflix to release *Trial By Fire*, a series based on the Uphaar Cinema fire incident that claimed 59 lives in June, 1997. The order was passed by Justice Yashwant Varma. A detailed order is awaited.

Earlier, the judge had reserved judgment on the suit filed by real estate tycoon Sushil Ansal (below), who was convicted in the case by the Supreme Court.

The show, which is set to stream from January 13 on Netflix, is based on a 2016 book titled *Trial by Fire: The Tragic Tale of the Uphaar Fire Tragedy*, which was written by Neelam and Shekhar Krishnamoorthy, a couple who lost their two children in the 1997 tragedy. The House of Talkies, along with Endemol Shine India, have produced the series.

The suit by Ansal, which has been filed through advocates Gautam Khazanchi, Kumar Vaibhaw, Somaya Gupta and Sukanya Joshi, said that the series was defamatory and infringed on his right to privacy. Seeking injunction against the release of the web series, Ansal claimed that the series directly attacked his personality as the teaser of the series, which claimed to be a work of fiction, mentioned his name. He further contended that the teaser has already garnered 1.5 million views in the past four days, which showed the immediate impact it had on the viewers.

As per the suit, 83-year-old Ansal has been punished both legally and socially for his association with Uphaar tragedy and his family has also suffered extensively. He also said that he has apologised to the families of the victims of tragedy and has also expressed deep remorse. He requested that he ought not to be made perpetually liable to be rebuked by the public time and again, especially after having served the sentence.

National heritage status for Ram Setu: SC directs govt to file affidavit by early February

The Supreme Court directed the Union of India to file its affidavit on a petition seeking national heritage status for Ram Setu (right) by the first week of February. The matter was mentioned by Rajya Sabha MP Subramanian Swamy before the bench of Chief Justice of India DY Chandrachud and Justice PS Narasimha.

Swamy told the apex court that the central government had earlier committed to submit a counter by December 12, but it was yet to file the same.

The petitioner then requested the Court to summon the Union cabinet secretary as the matter was related to the cabinet. Appearing for the Union government, Solicitor General Tushar Mehta sought time till February first week, stating that the matter was under consideration.

The apex court then granted time till February first week to the central government and fixed the matter for hearing in the second week of February.

Swamy had filed a petition in 2007 against the Sethu Samundram Ship Channel, alleging that the project, which aimed at linking Mannar Island and Palk Strait through an 83-km-long channel, was likely to impact the Ram Setu bridge, as the process involved extensive dredging.

Ram Setu is a bridge made of a chain of limestone shoals, off the south-eastern coast of Tamil Nadu. It runs from Pamban Island near Rameswaram in South India to Mannar Island, off the northern coast of Sri Lanka.

Rehabilitation work in full swing in Joshimath: Uttarakhand govt to Delhi High Court

The Delhi High Court was apprised by the Uttarakhand government that it has taken cognisance of land subsidence at Joshimath and efforts were underway to rehabilitate and resettle the residents from the disaster-prone town to safer places.

Appearing for the State of Uttarakhand, Deputy Advocate General JK Sethi told the Division Bench of Chief Justices Satish Chandra Sharma and Subramonium Prasad that both the central and state governments were working in tandem to tackle the natural crisis.

He said the National Disaster Response Force (NDRF) and the State Disaster Response Force (SDRF) have been deployed in the town and nearby areas. Besides relocating several people to safer places, the governments have also prepared a rehabilitation package, he added.

The High Court was hearing a PIL filed by Delhi-based lawyer Rohit Dandriyal, who is also a permanent resident of Uttarakhand's Pauri district, seeking constitution of a high-powered joint committee to look into the cracks (left) that have appeared in several homes at Joshimath.

The petitioner apprised the High Court that the Supreme Court has denied an urgent hearing on a similar plea.

Dandriyal urged the High Court to form a committee headed by a retired judge of the High Court, comprising representatives of all ministries involved in development work in the area, so that a plan could be devised for rehabilitation of the residents. The lawyer argued that he has also given a representation to the central government seeking constitution of a committee, but it was yet to be decided.

The holy town, housing around over 17,000 people, is located in the Chamoli district of Uttarakhand at a height of 1,800 metres above sea level. The town acts as a gateway to the Char Dham shrine of Badrinath and to trekking sites like the Valley of Flowers. It was declared a disaster-prone town after cracks started appearing in buildings and on roads.

Lakhimpur Kheri case: SC to take up Ashish Mishra bail plea on Jan 19

The Supreme Court, on January 19, will take up the bail petition of Ashish Mishra (below right), accused in the Lakhimpur Kheri violence (right) case. The Court noted that the trial in the case was not likely to conclude in the next five years.

Referring to the status report which was submitted in the apex court, the bench of Justices Surya Kant and V Ramasubramanian orally observed that it would take at least five years for the trial to conclude, as the case had more than 200 witnesses.

The bench heard the bail application of Mishra, son of Union Minister Ajay Mishra, who was arrested for his alleged involvement in the October 3, 2021 incident, which led to the death of eight people, including four farmers.

In December 2022, the apex court had directed its registrar to ascertain from the Additional Sessions Judge at Lakhimpur Kheri as to how much time the trial in the case on Lakhimpur Kheri violence was likely to take for conclusion.

The bench had further directed the state of Uttar Pradesh to file an additional affi-

davit, giving details about the progress and pace of the investigation and proceedings on complaint filed by one Sumit Jaiswal.

Advocate Prashant Bhushan, appearing for the complainants, urged the Supreme Court to hold the trial on a day-to-day basis in the main case, raising concerns over the complainants repeatedly facing threats. Bhushan alleged that the material witnesses were threatened and beaten up badly. The minister had threatened that a lesson would be taught. He further said that three people were brutally attacked in relation to the case.

The bench noted the submissions and said it was aware of the situation.

The arguments evoked a sharp response from Senior Advocate Mukul Rohatgi, who represented Mishra. The senior counsel refuted the allegations as being totally false, while opposing the request for a day-to-day trial. Bhushan then alleged that the government was hand-in-glove and this was the reason for the formation of the SIT.

Supreme Court extends Gautam Navlakha's house arrest to Feb 17

The Supreme Court bench headed by Justice KM Joseph said that due to the absence of Additional Solicitor General SV Raju for the hearing, the interim order allowing the house arrest of Navlakha shall continue.

Navlakha was represented by Senior Advocate Nitya Ramakrishnan, who informed the bench that Navlakha's daughter lives abroad and sought permission if he can receive a call from her. The house arrest period of Navlakha had expired.

On November 10, the Supreme Court had given assent to the plea by Navlakha to shift him from jail to house arrest for a month.

Navlakha, who is a former secretary of the People's Union for Democratic Rights, was arrested in August 2018, but was initially placed under house arrest.

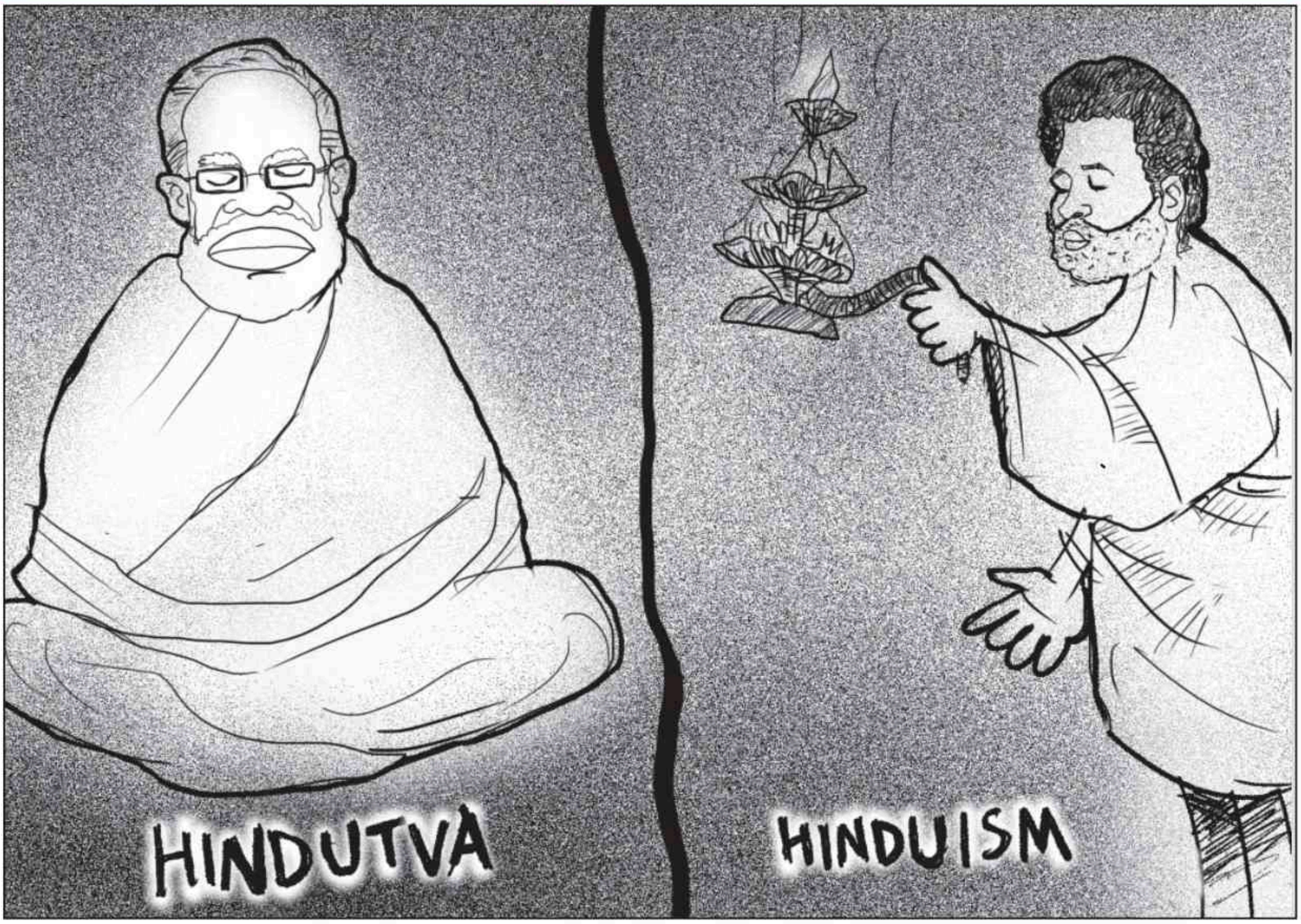
Later on, after a order from the Supreme Court, he was moved to Taloja Central Prison in Maharashtra in April 2020.

Navlakha after relying upon the judgment of the Supreme Court moved to the High Court, saying that he was being denied basic medical aid and other necessities in Taloja and was suffering great hardships at his advanced age. The plea was rejected by the Bombay High Court, prompting the present appeal before apex court.

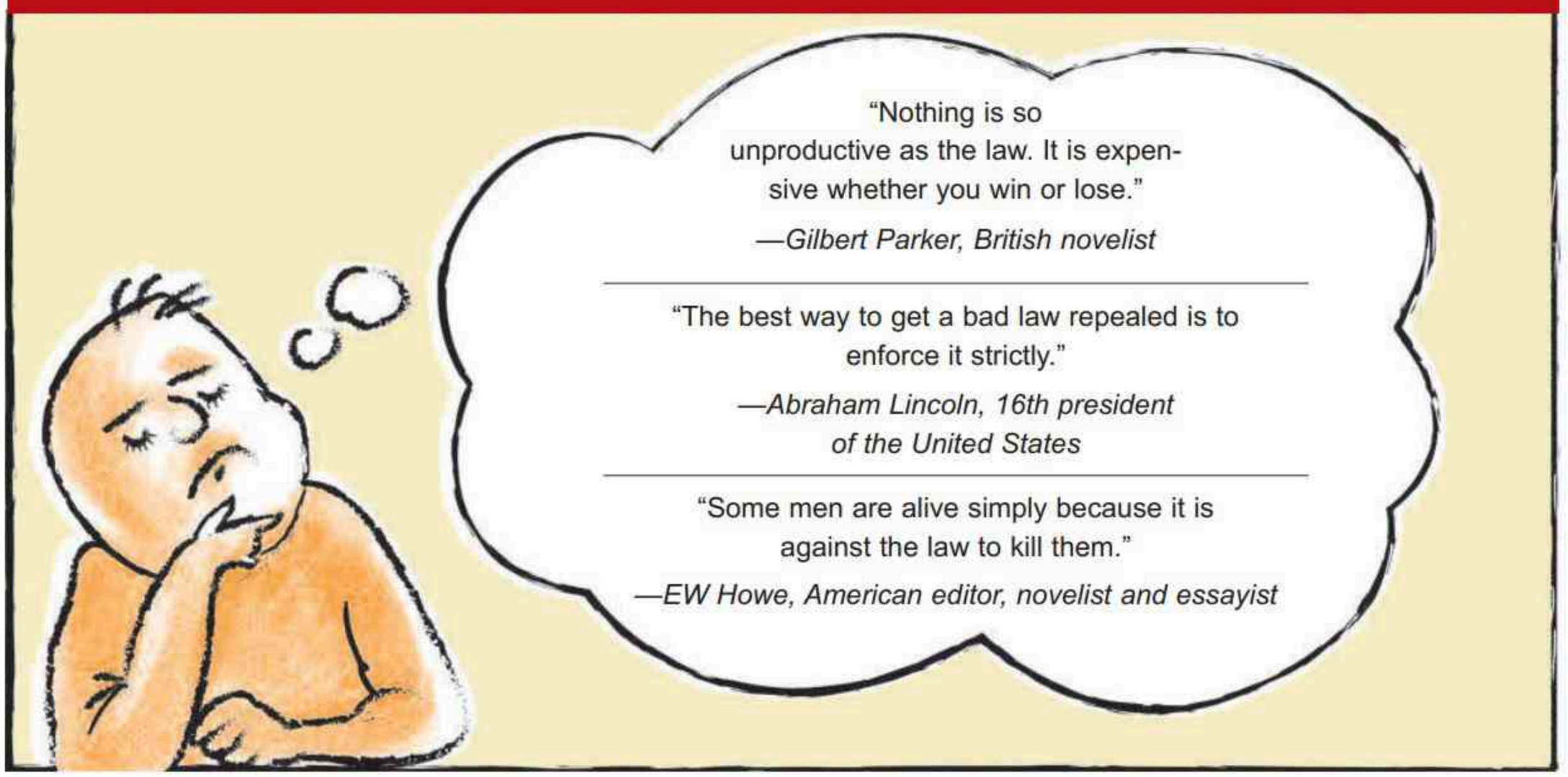
Navlakha was given house arrest instead of jail by the top court with various safeguards in place.

RINGSIDE

Shantanu Mitra



WORTH REMEMBERING



"Nothing is so unproductive as the law. It is expensive whether you win or lose."

—Gilbert Parker, British novelist

"The best way to get a bad law repealed is to enforce it strictly."

—Abraham Lincoln, 16th president of the United States

"Some men are alive simply because it is against the law to kill them."

—EW Howe, American editor, novelist and essayist

IS THAT LEGAL?

Ignorance of law is no excuse. Here are answers to frequently asked queries regarding matters that affect us on a day-to-day basis

Reasons For Preventive Detention

Can a person be arrested or detained in anticipation of a crime?

Yes, this is done according to preventive detention laws, under which a person is arrested or detained by the police in anticipation that he/she may commit a crime affecting public order, disrupting essential services to the community or threatening national security.

People engaging in cross-border smuggling of goods, involved in illicit trafficking of narcotic drugs and psychotropic substances, black marketeering, hoarding, etc, can also be arrested under the preventive detention laws.

Article 22 of the Constitution gives power to authorities for preventive detention. However, the person detained must be informed about the reason within five days of the arrest. And a person can be detained for a maximum period of two years only.

Property Rights for Muslim Women

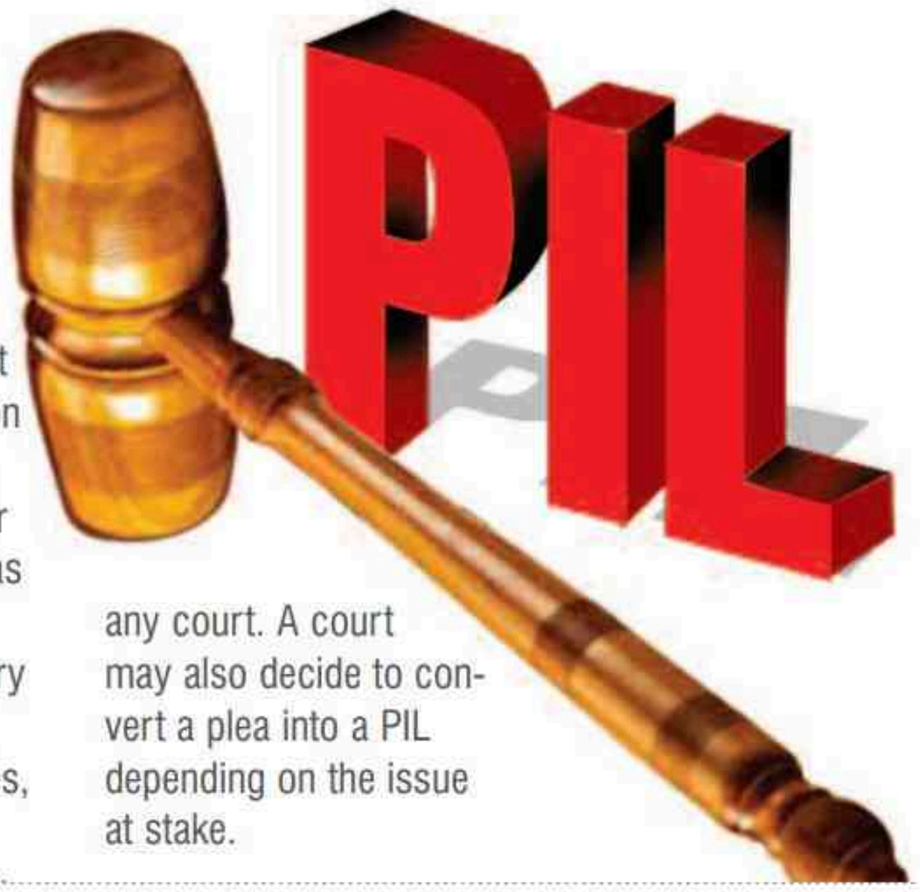
What are the succession rights of women under the Muslim personal laws in India?

Succession laws for Muslims in India are governed under two schools—the Shia and Hanafi. Under these laws, a Muslim mother can inherit property from her children in case they are independent. She will inherit one-sixth of her dead child's property if her son has children and one-third in the absence of any grandchildren. A daughter can have half the share in property if she has no brother. She can also receive gifts from those whom she would inherit property from. A widow is entitled to have one-eighth of the share of property if she has children and one-fourth if none. The share comes down to one-sixteenth if the husband has two wives. A Muslim cannot give away more than one-third of his property by will and if there are no heirs, the wife may inherit an amount greater than the will.

For Protecting Public Interest

What is a Public Interest Litigation?

A Public Interest Litigation, or PIL, is a plea filed in a court of law to seek justice on an issue of larger public interest. The whole idea is to protect public interest and it must be clear that the person filing a PIL has no vested interest. A PIL can be filed in a court either by an individual, an NGO, or any other rights group. However, the Judiciary has taken a serious note of many frivolous and irresponsible PILs being filed in courts and exemplary fines have been imposed in such cases. Under Order XXXVIII Rule 12 of the Supreme Court Rules, 2013, a PIL may also be taken up *suo motu* by any court. A court may also decide to convert a plea into a PIL depending on the issue at stake.



Judicial Re-examination of a Case

On what grounds can a person request the Supreme Court to reconsider its verdict in a case?

Whenever a person feels aggrieved by an order of the Supreme Court, he or she can file a Review Petition in the Court. However, the plea must state the grounds on which the Review Petition is being sought—it could be an important point/aspect missed by the Court, an error which needs to be rectified, and so on. The premise of entertaining a Review Petition is to prevent gross miscarriage of justice.

According to the laws laid down by the Supreme Court, the Review Petition must be filed within 30 days of the judgment, and as far as practicable, it is to be circulated, without oral arguments, to the same bench of judges who delivered the judgment or order sought to be reviewed. In case the Court sticks to the same conclusion in the Review Petition, a Curative Petition can be filed within a reasonable timeframe stating the same grounds.

A Friend of Court

What is the role of an *amicus curiae* in courts?

An *amicus curiae* is a person who is not a party to the case, but is appointed by a court to assist it in the case. He/she provides necessary information and facts on the case, unbiased opinion on the issue involved and even gives suggestions on questions of law to help the court decide a matter. However, it is the discretion of the court whether to accept the advice or not. The role of an *amicus curiae* is also sought when an accused is not represented by a lawyer and a petition is made in this regard. In this case, an *amicus curiae* is appointed by the court to defend the accused. It can also appoint an *amicus curiae* in any matter of public interest.

Getting Justice for Consumers

Can consumers get justice for poor quality of goods or inefficient service?

A consumer complaint can be filed with the district forum under Section 12 of the Consumer Protection Act, 1986. However, the chances of redressal in a matter involving complex questions of law increase if the case is filed in a civil court.

Appeals against an order from the district forum should be filed with the state commission and then with the National Consumer Disputes Redressal Commission (NCDRC). A consumer can also directly approach the Supreme Court under Section 23 of the 1986 Act if he/she is dissatisfied with the order given by the NCDRC. According to Order XXIV of the Supreme Court Rules, 2013, such appeals must be presented within 30 days from the date of the order.

— Compiled by India Legal team

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THE INDIAN ETHIC

Justice Surya Kant recently brought focus on the *Arthashastra*, which must be studied by those in public life. But its guidance cannot help much in governance if we lack ethics as often seen nowadays

By Justice Kamaljit Singh Garewal

SHARING HIS THOUGHTS
The concept of morality was the subject of a recent talk delivered by Justice Surya Kant of the Supreme Court at an event in Kurukshetra, Haryana

ON the edge of the village is a small pond, on the banks of which grows a peepul tree. The village elders would gather under its shade in summer months to meet and exchange stories. Shepherds and cowherds brought their flock to drink water from the pond. Children frolicked mischievously on the flat ground nearby, watched over by their grandfathers. This was the typical scene from times immemorial. It was our rural idyll.

The peepul tree is centuries old and has watched the march of invading armies, seen the young set off to defend their country. After one lot of invaders was replaced by another, more sophisticated and better organised young men joined them to defend their Empire. But a band of fighters took up non-violence as the path to win freedom back. The peepul tree watched the transition to Independence, with great expectations. Inevitably, development came and machines began to plough the farm lands in the name of progress. The peepul tree too was cut

down, while the pond got filled up and dried. With this advance of pseudo modernity, the centuries-old village life also slowly came to an end. The destruction of traditional village and small town life was now complete and our traditional ethical values were put in jeopardy.

The children who played on the grounds near the pond have grown into mature men and got married, but their children's playgrounds have shrunk. They now have laptop screens to play their games. Only a few can be seen on the playing fields and from among them, some develop into sportsmen at the district, state or national level. The village elders of the 1930s and 1940s, though, have moved on. Is the rustic ethical life and standards of morality, inherited from the past, still with us even in small measure?

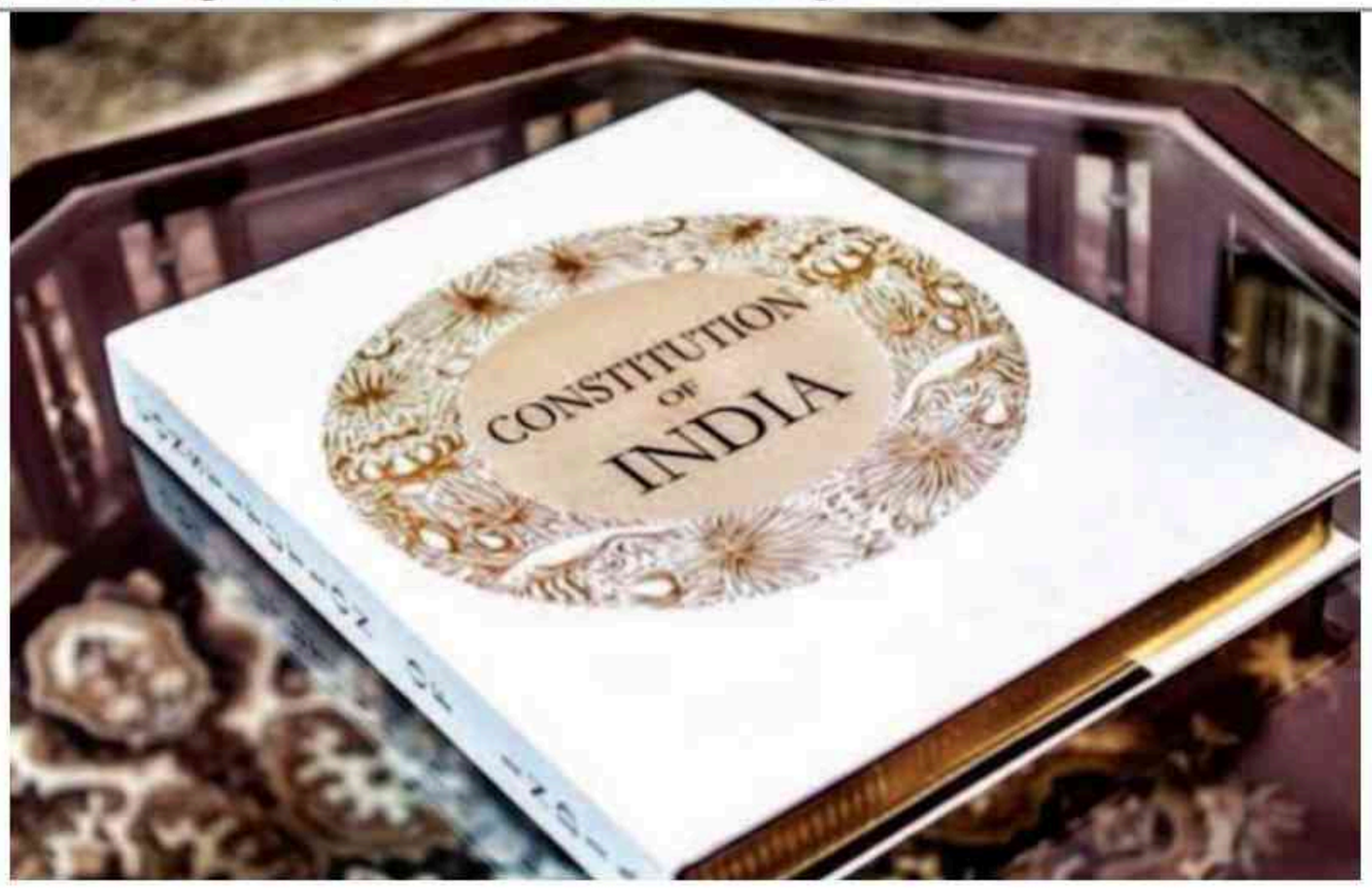
Sometimes in the village when a man was murdered or a child abducted or a woman molested, the elders would say that this was something very bad (*bahut bura hua*), and add that this should never have happened in their village, where everyone lived in a spirit of *bhaichara* (brotherhood). A strong denouncement of the perpetrators and their act and a clear statement of positive ethics. Sadly, the ethical voice now gets drowned in a myriad legal ways through which the perpetrators try to escape the clutches of law and sometimes, even punishment.

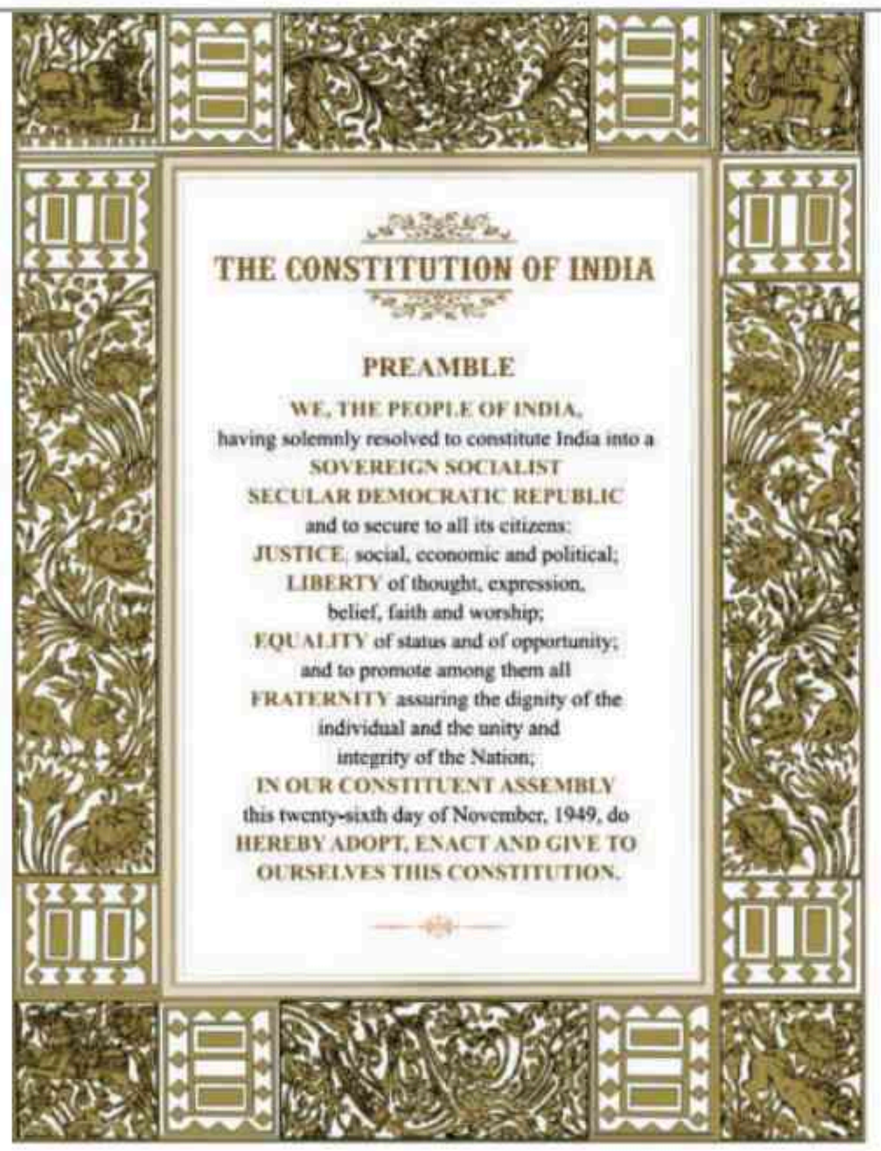
Justice Kant said that the evolution of India's legal system pre-dates Independent India and the most authoritative and famous text that lays out the uniquely Indian way of viewing law, politics, domestic and international affairs is Kautilya's *Arthashastra* (above).

Therefore, the Indian Ethic must be examined, defined, applauded and re-enforced. It has been written into our DNA, in the Constitution and laws, it is practised in homes, schools, colleges, work places and in public life. But the danger we are facing as a nation is the weakening of ethical standards and basic morality. Our timeless *bhaichara* must be strengthened by stopping inter-faith competition and casteism. In its place, we should develop rational humanism and universal brotherhood of man, and respect the dignity of each individual. This is the true Indian Ethic.

The concept of morality was the subject ▶

One of the most serious incidents which tested our ethics was the year-long farmers' agitation of 2020-21 that came to an end when the laws were withdrawn. Which side was acting ethically and which was acting legally? How should one strike a balance between ethics and law?




THE CONSTITUTION OF INDIA
PREAMBLE
WE, THE PEOPLE OF INDIA,
having solemnly resolved to constitute India into a
SOVEREIGN SOCIALIST
SECULAR DEMOCRATIC REPUBLIC
and to secure to all its citizens:
JUSTICE, social, economic and political;
LIBERTY of thought, expression,
belief, faith and worship;
EQUALITY of status and of opportunity;
and to promote among them all
FRATERNITY assuring the dignity of the
individual and the unity and
integrity of the Nation;
IN OUR CONSTITUENT ASSEMBLY
this twenty-sixth day of November, 1949, do
HEREBY ADOPT, ENACT AND GIVE TO
OURSELVES THIS CONSTITUTION.

On ethics, one should draw guidance from the Constitution itself. The Preamble is the most outstanding provision which lays down principles of ethics. Next in importance are the Directive Principles of State Policy and Fundamental Duties.

of a recent talk delivered by Justice Surya Kant of the Supreme Court. He was speaking at Kurukshetra on Resurgent Bharat: Changing Contours of Law and Justice. He discussed how our legal system had evolved, and hailed India's decision to supply Covid-19 vaccines to 80 other nations that could not have accessed it, and termed it an example of constitutional morality.

Discussing the evolution of our legal system, Justice Surya Kant said: "The evolution of our legal system does not begin with our liberation from British Rule, but it pre-dates Independent India. It is an accepted view among scholars that India had a form of legal system and structure even during the bronze age and the Saraswati Sindhu or the Indus Valley Civilisation. The most authoritative and famous text that lays out the uniquely Indian way of viewing law, politics, domestic and international affairs is Kautilya"s 'Arthashastra'."

Justice Kant further said that he was not advocating any particular principle or rule of law which was prevalent in ancient India, but it was certainly not something that we got from the Britishers. "We had a very rich heritage and that heritage is reflected from the very meaning of the word *arthashastra*, which conveys the intent behind all-encompassing Rules of Nature. In simple terms, Kautilya's objective was to bestow upon us his understanding of the science of all things, whether they be economic trade or wealth, social polity and unity and administration of justice and law. It is our very own *magnum opus* on how to run a fully functioning State and is considered to be one of the earliest works of legal realism."

Kautilya's "Arthashastra" is our peepul tree. It was a treatise written about 2,400 years ago as a practical guide for kings, his ministers and officials. It covers every conceivable subject under the sun which still has relevance in modern administration and governance. The book is a masterpiece of topics like statecraft, politics, military warfare, law, accounting, taxation, fiscal policies, civil rules, internal and foreign trade, etc. "Arthashastra" must be studied and its principles followed by men and women in public life like judges, administrators, military and police officers, economists and planners. But guidance from this ancient text cannot help much in governance if we lack basic ethics.

Returning to real-life India, we see people flouting even traffic rules. At a railway level crossing, one sees impatient drivers overtaking waiting cars to get ahead. At bus stands, many refuse to form a queue to wait for their turn to be attended by the booking clerk. People seem to think that a push and a shove can help them get ahead quicker. Basic ethics have vanished. People

carelessly throw household garbage on the roads. Many a time, unethical behaviour takes a serious turn, particularly when no one is watching, no one else knows and no one will tell. Giving and accepting bribes, concealing the real value of sale/purchase of land or a used car when only a part of the price is paid through a bank. And what about our open and blatant *sifarish* culture when connections are used to get a job, a posting, a promotion?

One of the most serious incidents which tested our ethics was the year-long farmers' agitation of 2020-21. Three laws were passed by Parliament, supposedly for the benefit of farmers and agrarian economy. Farmers of the farming belt of North India organised themselves and registered their protests because they were the best judges of the benefits which the laws were promising to deliver to them. Therefore, the agitation was ethically and morally justified. But negotiations with government ministers did not make any progress in spite of a dozen meetings. Finally, the agitation involved hundreds of thousands of protesters, who camped under freezing conditions, faced cold winds, hot sun, dust storms, rain and all kinds of privations and hardships. After loss of hundreds of lives, the protest finally came to an end when the laws were all of a sudden withdrawn. The question which arises is this: which side was acting ethically and which was acting legally? How should one strike a balance between ethics and law? Was it *kisan bhaichara* v. the rest? Sadly, the much needed reforms have taken a back seat. Whereas ethics and morality should have been in the forefront to prevent such confrontations, the cost to the nation has been too dear to bear.

On ethics, one should draw guidance from the Constitution itself. The Preamble is the most outstanding provision which lays down principles of ethics. Next in importance are the Directive Principles of State Policy and Fundamental Duties. Many issues of enforcement of rights against the State, which take up so much judicial time and resources, would be otiose if handled by the State in an ethical and fair manner, in the first place. We know that this does not happen. As a result, the judiciary has to discharge an extraordinarily heavy burden.

The Indian situation on the subject of ethics remains very ambivalent, to say the least. In the ultimate analysis, ethics cannot be inculcated in the people of India without proper role models at all levels, starting from parents at home and school teachers at school. Ethics is not something which can be legislated upon. The Constitution shows us constitutional morality, but it is for the People of India who must follow the path and bring ethics and morality into their daily lives, at least in public affairs. The village elders under the peepul tree had an ethical message to convey for future generations, but they have passed on and the tree has been uprooted. Our selfish, self-centered, consumer-driven, materialistic people have put the Indian Ethic under serious challenge. ■

The Indian situation on the subject of ethics remains very ambivalent, to say the least. In the ultimate analysis, ethics cannot be inculcated in the people of India without proper role models at all levels, starting from parents at home and school teachers (above) at school. Ethics is not something which can be legislated upon.

The writer is former judge, Punjab & Haryana High Court, Chandigarh and former judge, United Nations Appeals Tribunal, New York

EATING ORDER

The apex court recently passed a judgment ruling that the owner of movie halls or multiplexes have the right to regulate people from carrying any outside food or beverage into the theatres. It is a huge reprieve for cinema operators

BIG cinema chains like PVR and Inox are breathing sighs of relief after the Supreme Court order. A bench of Chief Justice of India DY Chandrachud and Justice PS Narasimha noted on January 3, 2023, that cinema halls are private properties and the owners are entitled to set terms and conditions on the moviegoers as long as it is in public interest and safety. "A cinema hall is a private property. What goes in is for the owner of the property to decide subject to statutory rules," the bench pointed out.

Giving real-life examples, the bench said that the owner of cinema halls may not want people wiping hands on the seats after eating *jalebis* brought from outside and therefore can forbid the same. "It's his right. He may not want tandoori chicken to be bought in. No one is forcing them to buy popcorn. But the owner has a right," the bench added. It said that concessions could be made for providing free water at movie theatres, but that doesn't give moviegoers the right to bring lemons from outside and make lemon water inside the hall just because lime water is priced at Rs 20.

"The basic premise is that cinema has a right to reserve admission. The cinema own-

ROW OVER RIGHTS
Food at cinema halls has been a matter of controversy and litigation for many years, with moviegoers demanding that owners allow outside food

ers have a right to sell their own food and beverages. The owner is entitled to set terms and conditions so long as such terms and conditions are not contrary to the public interest, safety, and welfare. The owner is entitled to set terms for the sale of food and beverages. Movie goer has the choice to not purchase the same," the bench stated.

The bench also said that cinema hall owners could consider allowing parents of children to carry a certain amount of food inside the theatres. "It is also reiterated that when an infant accompanies a parent, cinema owners shall not object to reasonable food carried for the infant," it directed.

The Supreme Court bench of CJI DY Chandrachud (left) and Justice PS Narasimha observed that a cinema hall is a private property and what goes in is for the owner of the property to decide subject to statutory rules.

Food at cinema halls has been a matter of controversy and litigation for many years, with moviegoers vehemently fighting for cinema halls to allow outside food citing high prices. The issue has led to various incidents one of which included a viral video depicting an MNS worker slapping a multiplex manager over high prices of food in June 2018.

In the same year, the Jammu and Kashmir High Court lifted the ban on moviegoers from carrying outside food in theatres. The ruling further led to the Multiplex Association of India and Jammu and Kashmir cinema hall owners filing a plea against the same in the Supreme Court. The latest ruling of the apex court overruled the High Court judgment, noting that the initial ruling would affect the legitimate rights of theatre owners.

Senior advocate KV Viswanathan contended that since cinema halls were private properties, the admission rights could be reserved. The counsel for the original petitioner submitted that the cinema ticket represents a contract between a movie goer and the movie hall, and since the prohibition is not printed on the ticket, outside food could not be prohibited. Viswanathan argued that there is no compulsion to buy food in the movie halls and that precincts of cinema halls are not public property. Advocate Sumeer Sodhi, appearing for the GS Malls Pvt. Ltd., argued that the receipts issued by theatre owners have a specific condition mentioned on them to the effect that no outside food is allowed.

The bench observed that the fundamental aspect which needs to be noted is that the trade and business of running a cinema theatre is subject to regulation by the state which has framed the Jammu and Kashmir Cinemas (Regulation) Rules, 1975. It said, admittedly, the rules contain no mandate compelling the owner of a cinema theatre to allow a movie goer to bring food or beverages within the precinct of the theatre.

The bench said it needed no emphasis that the rule making power of the state has to be exercised in a manner consistent with the fundamental right of the hall owners to carry on a legitimate trade and business within the meaning of Article 19 (1)(g) of the Constitution. "Viewers visit a cinema hall for the purpose of entertainment. We are clearly of the view that the High Court transgressed the limits in the exercise of its jurisdiction under Article 226 of the Constitution by ordering and directing the state to ensure that there should be no prohibition on a movie goer bringing eatables and beverages from outside within the precinct of a cinema hall," the bench concluded.

To put things in perspective, in 2022, multiplex chain Inox Leisure sold 863 tonnes of popcorn, over 5.1 lakhs sandwiches and 38.15 lakh litres of Coke to its customers. ■

—By Abhilash Singh and India Legal Bureau

TATA TO WAGE ARREARS

The Delhi High Court dismissed a plea of a section of Indian Airlines employees regarding unpaid wage arrears of Rs 208 crore. If disinvestment takes this route, will the prime State policy be in trouble?

By Sanjay Raman Sinha

DISINVESTMENT BLUES
The Delhi High Court said Air India had ceased to be a government-controlled company, and therefore, the plea was untenable.The verdict has disheartened a certain group of employees from the erstwhile Indian Airlines

IN a judgment that brings into question the whole process of disinvestment, something dear to this government, the Delhi High Court refused to entertain a petition by the Indian Airlines Officers Association (IAOA) seeking pay and allowance arrears from Air India, with which it merged in 2007. The Court said Air India had ceased to be a government-controlled company and therefore, the plea was untenable. IAOA had sought arrears of pay and allowances from January 1, 1997, to July 31, 2006, to the tune of Rs 118 crore, though the total arrears which include two other associations is Rs 208 crore.

Justice Jyoti Singh said: "It is an admitted position that during the pendency of the present writ petition, on 27.01.2022, 100 per cent shareholding of Air India has been acquired by M/s. Talace Pvt. Ltd. and Air

India have ceased to be Government controlled companies, and are no longer amenable to the writ jurisdiction of this Court.... The writ petition cannot be entertained."

Further, the counsel for Air India said it had been privatised and the entire shareholding of the Government of India had been transferred to a wholly owned subsidiary of Tata Sons Pvt. Ltd and, therefore, the petition cannot lie under Article 226 of the Constitution as Air India was no longer a public body.

This judgment raises serious questions about the entire disinvestment process of the government and the liabilities of a public sector company which has been bought by a private entity. Do the dues die a natural death or is the private entity liable to shoulder them?

The disinvestment of Air India left a certain group of employees from the erstwhile Indian Airlines in the lurch. The Court judgment has disheartened them further. The disinvestment deal of AI was completed in January 2022 after a long drawn out, two-year process, following which it was bought over by the Tatas.

Many issues had plagued the disinvestment—employees' leave encashment options, pre-Covid level salary payment, medical benefits, clearance of pending dues, pension and wages matters and accommodation. After a protracted battle with the management, most Indian Airlines employees got their dues, while another set were left holding the short end of the stick. How fair is that?

Ranjan Dutta, former general secretary of IAOA and a petitioner in the matter, narrated the ordeal: "As people retired and died, we were barely 1,400 people left without getting our dues. We are still fighting it out in the courts. Who will pay our arrears? Our wages were given under a statutory order which was a Presidential Directive of the Ministry of Civil Aviation. So to say today that there is no statutory sanction behind the wage order is incorrect."

The bitter experience has put a question mark on the process of disinvestment: its means and end. The Indian Airlines-affected group is a matter of case study. This is the way the story unfolded.

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In January 1, 1997, under the direction of the Rakesh Mohan Committee, the wage revision of Indian Airlines was due. However, the requirement was that it should have been profit-making for three successive years. The Indian Airlines management till 2006 did not notify wage revision for presidential direction despite the fact that the airline was profit-making for three successive years twice.

However, in a pre-merger pact between Air India and Indian Airlines in April 2006/2007, the management, strangely, allowed wage revision to Air India which was a loss-making body, but not to Indian Airlines which was still profit-making. While others got wage arrears for 120 months, the affected group was given dues of four months only.

In protest, the Indian Airlines staff union (Air Corporation Employees' Union) went on strike. As they were a unionised category, they collected wage arrears from January 1, 2000, instead of January 1, 1997. So effectively, they lost three years of arrears and received one promotion each. However, officers, who are debarred from union activity, could not go ▶

"Article 226 says that a *writ of mandamus* could be issued even against a private authority discharging a public function and rights sought to be enforced must be public duty."

—Dr Pradeep Sharma, senior advocate in the Supreme Court, and an expert on service matters

"The interests of employees were not considered while taking the privatisation decision. People who have served the airline for the best part of their life are now running from pillar to post..."

—Capt SS Panesar, former director, Flight Safety & Training, Indian Airlines

The bitter experience has put a question mark on the process of disinvestment: its means and end. The Indian Airlines-affected group is a matter of case study. The government has altogether shed its responsibility towards the Indian Airlines employees.

on strike and were denied wage and other benefits. Out of 18,000 employees, 13,500 were paid wage arrears because they went on strike. The remaining 4,500 were left high and dry, contrary to the tenets of natural justice.

Dutta elaborated: "The total liability of unpaid wage arrears to three categories of employees—the Indian Airlines Officers Association, the Indian Airlines Engineers Association and the Indian Airlines Technicians Association—was a total of Rs 208 crore, of which Rs 118 crore was of IAOA's. This amount of Rs 208 crore still appears in the annual report and balance sheet of Air India and has been passed on to the Tatas which had given in writing that it will pay this amount. I intend to take this fight further in the courts."

The embittered group filed a case in the Delhi High Court where the December 2022 verdict smashed their dreams once again. The Court held that since Air India was no more a government body, writ jurisdiction shall not apply on the Government of India to direct Air India to make the payment.

Dr Pradeep Sharma, senior advocate in the Supreme Court, and an expert on service matters, told *India Legal*: "The High Court of Delhi has observed that the writ petition was not maintainable, whereas the Supreme Court in *Mr. R.S. Madireddy vs The Union of India and Ors.* has held that writ petitions under Article 226 directed against private entities in respect of the discharge of any public duties are maintainable. Article 226 is worded in such a way that a *writ of mandamus* could be issued even against a private authority. But such private authority must be discharging a public function and rights sought to be enforced must be public duty. However, a right which purely originates from a private law cannot be enforced taking aid of the writ jurisdiction irrespective of the fact that such institutions are discharging public duties. It appears from the above that the aggrieved party may take shelter of this aspect."

The government's stand vis-a-vis the affected employees has been unrelenting. In this particular case, the government has altogether shed its responsibility towards the Indian Airlines employees. In another case when Air India employees faced accommodation problems, the government asked them to sign undertakings in 15 days or pay Rs 15 lakh penalty. Such instances abound. This puts a question mark on the government's privatisation policy, processes and priorities.

In fact, in 1996, under the United Front government, a public sector Disinvestment Commission was set up to formalise norms for privatisation. One of the terms of the Commission was to ensure that appropriate measures were taken during disinvestment to protect the interests of the affected employees. But as is wont of commissions, the suggestions were buried in files.

In 2000, the norms for prioritising PSUs for divestment were declared. It was held that privatisation would be given to firms where sales led to considerable revenues to the government; where the sale of the unit could be done with the least difficulty in a short time and where mounting losses could be stopped swiftly. However, the norms for employees' future were not a matter of consideration. If today the affected employees are compelled to demand justice from courts, how compatible are the laws of the land to their rights and tribulations?

Sharma explained: "Employees are entitled to salary/pension as part of constitutional rights. The High Court of Andhra Pradesh held that employees, whether current or former, are entitled to salary or pension whichever the case as a right to life under Article 21 and right to property under Article 300A of the Constitution in *J. Aswartha Narayana Vs State of Andhra Pradesh*."

The basic tenet of strategic disinvestment

is that the government should withdraw from areas where competitive markets have matured and are operating on a fair playing field. However, the doctrine of public trust enjoins that the government act fairly and transparently when dealing with public assets and employees. The government has a liability towards the employees as well as the public fund invested in the unit. Lack of proper planning reflects badly on the executive.

Capt SS Panesar, former director, Flight Safety & Training of Indian Airlines, has experienced the brunt of privatisation. He said: "It is quite clear that the interests of employees were not considered while taking the privatisation decision. Take the example of the merger of United Airlines and Continental Airlines four years back. The deal was finalised only when transfer, wages and dues of employees got sorted out. Here, the government took the privatisation decision without a forethought for the employees' future and interests. Employees are facing accommodation woes, their medical benefits have been affected, wages have not been paid.... It is anarchy. People who have served the airline for the best part of their life are now condemned to run from pillar to post, from government and airline offices to courts...."

The India's aviation market is currently the world's third largest. As it moves out of the shadow of Covid-induced recession, airlines are expected to double their strength in the next 10 years. In terms of passenger carriage, AI will be the largest international and second largest domestic airline. But as AI expands its wings and becomes profitable, employee rights should not be forgotten lest they haunt it later.

Today, harsh market realities and fiscal compulsions dictate investment. Hapless employees are caught in the spinoff and have to take shelter in courts. Strangely, the courts have circumscribed their jurisprudence limits and avoided judicial overreach in economic matters unless there is violation of statutory constitutional provisions. Over the years, in a series of judgments, this stand of the Supreme Court has crystallised as a judicial testament.

In the BALCO case, the apex court declared that "it is neither within the domain of the Courts nor the scope of judicial review to embark upon an enquiry as to whether a particular policy is wise or whether a better public policy can be evolved. Nor are our Courts inclined to strike down a particular policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical".

Though employees may not be intimated prior to the merger or disinvestment, they are supposed to be informed in advance when a decision affecting their professional status is taken.

After the disinvestment decision, BALCO Employees Union appealed in the Delhi High Court. The Court held that "whenever the final decision is to be taken by the Respondents affecting the interests of the workers, the same be intimated with two weeks' advance notice to the Petitioners by the Respondents".

Much has changed since the BALCO case; disinvestment is a prime State policy now. The Modi government had renamed the Department of Disinvestments as the Department of Investments and Public Asset Management and spearheaded its disinvestment drive. Since 2014, the government has raised over Rs 4.04 lakh crore through disinvestment and strategic sale of public sector enterprises.

As the saga of disinvestment continues and crores are raked into government coffers, the rights and interests of employees shouldn't be shortchanged. Employees who have given the prime years of their life for a company should not be given a copper handshake and asked to walk into the sunset. ■

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ALL CREATURES GREAT AND SMALL

Petitions have been filed in various courts regarding "harm" done to non-human objects, be they dogs, cows, trees or rivers. Should they be seen as frivolous pleas which waste the court's time?

GRANTING RELIEF
An FIR was launched against a Swiggy delivery boy whose bike had allegedly hit a street dog at Marine Drive (above) in Mumbai. The Bombay High Court quashed the FIR

"NO doubt, a dog/cat is treated as a child or as a family member by their owners, but basic biology tells us that they are not human beings." The Bombay High Court made this observation while quashing an FIR under Sections 279, 337, 429 of the Indian Penal Code; Section 184 of the Motor Vehicles Act, 1988 and Section 11(a)(b) of the Prevention of Cruelty to Animals Act, 1960.

The accused/petitioner was 20-year-old final year student of Diploma in Electronics and Telecommunication. At the time of the incident, he was 18 and working as a delivery partner in Swiggy. The incident took place on April 11, 2020 at about 8.00 p.m. The complainant was then feeding stray dogs at Marine Drive and alleged that the accused person's bike hit a street dog, injuring it. The bike, meanwhile, skid about 40m and the accused also fell and got injured. Following this, the complainant lodged an FIR against him.

So, what do the various Sections of the IPC deal with? Section 279 deals with rash driving. It says: "Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any

other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

Section 337 says: "Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both."

Section 429 says: "Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both."

Meanwhile, Section 184 of The Motor Vehicles Act, 1988 says that whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, (or which causes a sense of alarm or distress to the occupants of the vehicle, other road users, and persons near roads,)...shall be punishable for the first offence with imprisonment for a term, (which may extend to one year but shall not be less than six months or with fine which shall not be less than Rs 1,000 but may extend to Rs 5,000 or with both). And for any second or subsequent offence if committed within three years of the commission of a previous similar offence there will be imprisonment for a term which may extend to two years, or with fine (of Rs 10,000), or with both. This can include jumping a red light, violating a stop sign, use of handheld communication devices while driving, overtaking other vehicles in a manner contrary to law, driving against the authorised flow of traffic or driving in any manner that falls far below what would be expected of a competent and careful driver.

Section 11 of The Prevention of Cruelty to Animals Act, 1960 says: "If any person—(a) beats, kicks, over-rides, over-drives, overloads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animals to be so treated; or "(b) [employs in any work or labour or for any purpose any animal which, by reason of its age or any disease], infirmity, wound, sore or other cause, is unfit to be so employed or, being the owner, permits any such unfit animal to be so employed."

Justices Revati Mohite Dere (left) and Prithviraj Chavan of the Bombay High Court noted that Sections 279 and 337 of the IPC pertain to acts endangering human life, or likely to cause hurt or injury to any other person, and "do not recognize and make an offence any injury caused otherwise than to human being..."

The Division Bench of Justices Revati Mohite Dere and Prithviraj Chavan of the Bombay High Court noted that Sections 279 and 337 of the IPC pertain to acts endangering human life, or likely to cause hurt or injury to any other person. "The said sections do not recognize and make an offence any injury caused otherwise than to human being. Thus, insofar as the injury/death caused to the pet/animal is concerned, the same would not constitute offences under Sections 279 & 337 of the Indian Penal Code."

As far as application of Section 429 is concerned, the same will also have no application, as the essential ingredients (i.e. causing loss and damage to a person or the property), warranting application of this Section, are amiss, the Court noted. In order to attract Section 184 of the Motor Vehicles Act, the Court said that neither the circumstances stipulated in the explanation nor the provisions were made out/disclosed in the facts.

Lastly, Section 11(a)(b) of Prevention of Cruelty to Animals Act would also not ▶

There have been other instances in the past where non-human objects were the subject matter of petitions. On August 17, 2021, the Allahabad High Court observed that every effort should be made to revive the holy river Ganga (above) and make it pollution-free. The Court said that there is no match to the everlasting divinity of the river.

apply due to the manner in which the incident took place. There was no intent whatsoever of the accused to cause the death of the dog which intersected the road when he was on his bike on the way to deliver a food parcel, the Court held. "Nothing is shown by the prosecution to show that the petitioner was driving beyond the speed limit stipulated on the said road. The incident shows that the dog crossed the road, as a result of which, the petitioner's bike due to sudden braking, skidded and as such the petitioner sustained injuries on his person in the said incident and the dog got injured and later succumbed to the same," the order said.

There have been other instances in the past where non-human objects were the subject matter of petitions. On August 17, 2021, the Allahabad High Court referred to Prime Minister Narendra Modi's statement after getting elected from Varanasi parliamentary seat in May 2014 where he said that it was his destiny to serve Maa Ganga.

The Court observed that every effort should be made to revive the holy river and make it pollution-free. It said: "According to Hindu Mythology, Bhagiratha, a legendary king of the Ikshvaku dynasty, brought the River Ganga to Earth from heavens because only she could bestow nirvana to Bhagiratha's ancestors who were cursed by Sage Kapila. After years of great penance, River Ganga descended on Earth and Lord Shiva agreed to channelize her flow. Therefore, River Ganga flowed from Lord Shiva's hair. The place where the sacred river originated is known as Gangotri in present times, and since the river originated from Lord Shiva's Jata (hair) it is also called Jatashankari."

The Court added: "River Ganga is called by several names, including Jahnavi, Shubhra, Sapteshwari, Nikita, Bhagirathi, Alaknanda, and Vishnupadi. It is believed that it flows from all the three worlds—Heaven/Swarga, Earth/Prithvi, and Hell/Patala. In Hinduism, the holy River Ganga is personified and personalized as Goddess Ganga. People believe that bathing in the pious Ganga can help wash all sins. It is also believed that a mere touch of the river can help attain moksha (salvation) and so the ashes of the dead persons are immersed in the sacred river so that the dead attains moksha (gange tav darshanarth mukti). There is no match to the everlasting divinity of holy river Ganga," the Division Bench of Justice Ritu Raj Awasthi and Justice Dinesh Kumar Singh observed.

And then on September 2021, the Allahabad High Court suggested that the cow be declared a national animal, keeping in view its Vedic, mythological and cultural importance, apart from social utility. A single-judge Bench of Justice Shekhar Kumar Yadav made the above observation while rejecting a bail application of a person charged under Section 379 of the IPC (Punishment of Theft) and Sections 3, 5, 8 of the Prevention of Cow Slaughter Act.

The Court said that the cow is considered a mother in India. It is a matter of faith for Hindus. Injury to the faith weakens the country. Eating beef is not a fundamental right of anyone. The Right to Life cannot be taken away for the taste of the tongue. The old sick cow is also useful for agriculture. It is not right to allow its killing. It is the backbone of Indian agriculture, it added.

And in December 2019, a PIL was filed in the top court seeking direction to recognise trees a Living Entities entitled to rights. The PIL was later withdrawn.

Besides humans, it is obvious that non-human objects too are revered and their harm agonises people to such an extent that they file petitions in courts. ■

—By Shivam Sharma and India Legal Bureau

TWO JUDGES FROM INDIA

Two American lawyers of non-resident Indian origin succeeded in recent judicial elections in Houston, Texas. Both have their roots in Kerala. Americans of Indian origin are about 1% of the 330 million people in USA and have demonstrated accomplishments in business, government, medicine, academics, and now law

By Kenneth Tiven in Washington

TO understand Houston, Texas, it helps to know that it is the largest landlocked municipal area in the USA, with roughly the equivalent in population to Hyderabad. The city and its immediate surrounding communities are about 70,00,000 people. Ft. Bend County is on the southwest corner of Harris County, which is Houston proper.

Surendran K Pattel and Juli A Mathew have been elected municipal court judges there. Pattel grew up in Kasaragod, Kerala, in a poor family, dropping out of 10th grade to become a *beedi* roller. Mathew, who won a second term on the municipal court in Ft. Bend County, is from Thiruvalla, Kerala. She was sworn in via video conference while visiting her in-law's house in Kerala.

Pattel's journey is one of determination. Growing up poor in Kasaragod, he took odd jobs while in school to keep his family afloat financially. Circumstances forced him to drop out of school in the 10th grade. He then became a full-time roller of *beedis* at Bharat Beedi, which claims it makes 60 million *beedis* a day for sale across India. Despite multiple obstacles, he became a

GRIT AND DETERMINATION
Surendran K Pattel (right) was sworn in as a judge in the 240th Judicial District Court in Texas' Fort Bend County while Juli A Mathew took oath as a judge of the Fort Bend County Court from Kerala

"My selection will instill confidence in people, especially Indians and other people from the Asian community, that it is very much possible."

—Juli A. Mathew

lawyer, borrowed money from his friends to enroll in university, and worked while studying. In 1995, he obtained a law degree.

In 2007, Pattel's wife was recruited as a nurse in a prestigious medical facility in the US. So, with their daughter and another baby on the way, the couple moved to Houston. Pattel took care of their daughter and worked as a salesman. He says: "From being a successful lawyer in the Supreme Court of India to being a salesman. You can see the emotional issues involved in that transition. I went through a lot of emotional frustrations and a state of depression."

Deciding to continue his legal career, he studied and passed the Texas bar exam on the first attempt. He practiced law, lost his first try for an elected judgeship, but came back in November 2022 to win.

His answers to questions for Ballotpedia's Candidate Connection about why he was seeking election give an idea of his determination and personality.

What areas of public policy are you personally passionate about?

As an attorney and a judicial candidate, I am passionate about the law, justice, and equality under the law. As an elected public servant, I would be determined to run my courtroom in as efficient a manner as possible, committed to the ideal of reducing court backlogs.

None of this is meant to suggest that I would ever advocate a rush to judgment. At the same time, we must never forget the legal maxim "justice deferred is justice denied". Every person who enters an American courtroom—be he/she the defendant or a plaintiff—is entitled to our immediate respectful attention.

What is something that has been a struggle in your life?

I was born into a hardscrabble existence in my native India. While I had a loving and supportive family, education was not a priority. Still, I managed to work my way through college and law school. Furthermore, once I began to practise law, I was determined to help my nephew, the son of my widowed sister. In the end, I put him through law school, too. The struggle to succeed was real; the rewards have been immeasurable.

Is there a particular judge, past or present, whom you admire?

Supreme Court Justice Ruth Bader Ginsberg

Juli A Mathew, an Indian-American from Thiruvalla is the first Indian-American to be elected to the bench in Texas. Four years previously, when she won, she was the first woman on the bench in Ft. Bend County. "My selection will instill confidence in people, especially Indians and other people from the Asian community, that it is very much possible," she said.

"As an attorney and a judicial candidate, I am passionate about the law, justice, and equality under the law. As an elected public servant, I would be determined to run my courtroom in as efficient a manner as possible, committed to the ideal of reducing court backlogs."

—Surendran K Pattel

Judge Mathew was the Associate Municipal Judge in Arcola, Texas, and a practising attorney for 15 years, with experience in civil litigation, probate, and criminal matters. Her peers voted her to be the Administrative Judge for the County Courts. She also headed the first Juvenile Intervention and Mental Health Court. ■

—The writer has worked in senior positions at The Washington Post, NBC, ABC *and* CNN *and also consults for several Indian channels*

2 STATES

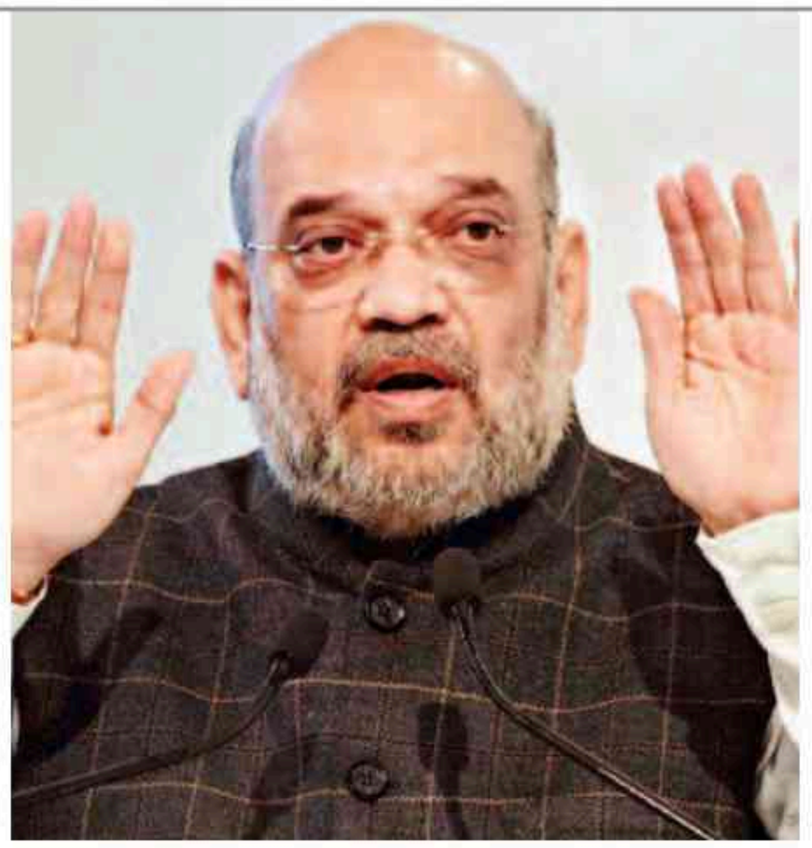
The six-decade-old row between Karnataka and Maharashtra can be traced to the States Reorganisation Act, 1956. Other states too are embroiled in disputes which are nowhere near resolution

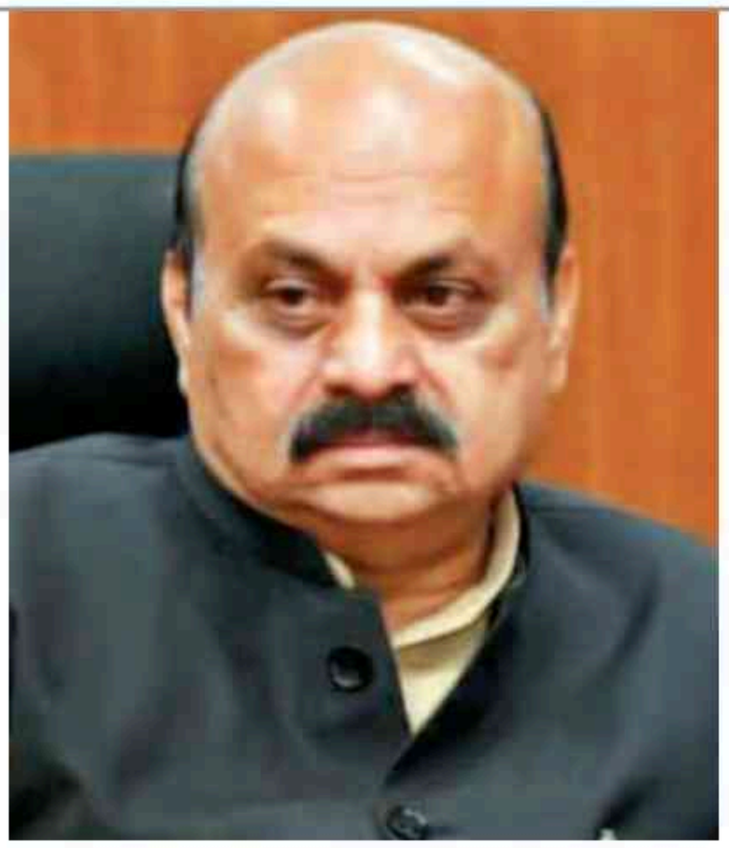
RECENTLY, the Maharashtra assembly passed a resolution over the raging border dispute with neighbouring Karnataka. The resolution aimed to pursue a legal battle in the Supreme Court and merge 865 Marathi-speaking villages with Maharashtra along with Belagavi, Karwar, Bidar, Nipani and Bhalki cities.

Incidentally, earlier, the Karnataka assembly had also passed a resolution resolving to protect the state's interests and not to give up an inch of land to Maharashtra. The border dispute between the two states had escalated on December 6, following which the Maharashtra government suspended all bus services to Karnataka. Vehicles going from Pune to Bengaluru were stopped and trucks pelted with stones.

Recently, Home Minister Amit Shah held a meeting with the chief ministers of both states. Both agreed to form a joint panel to look into the issue. Controversy erupted when Karnataka Chief Minister Basavaraj Bommai said that some villages of Maha-

RENEWED UNREST
A protest (right) related to the long standing border row between Maharashtra and Karnataka over Belagavi, which is at the heart of the disputed land (see map) claimed by both the states





Recently, Home Minister Amit Shah held a meeting with Karnataka Chief Minister Basavaraj Bommai (right) and Maharashtra Chief Minister Eknath Shinde (left) to discuss the border controversy. Both agreed to form a joint panel to look into the issue.

rashtra would be included in Karnataka.

With the independence of India, Belagavi district of former Bombay Presidency became a part of Bombay State. In 1956, the States Reorganisation Act incorporated it into the newly formed Mysore state (now Karnataka). This placed Belagavi, with its majority of Marathi speaking people, within the Kannada-majority Karnataka. The adjoining areas with mostly Marathi-speaking citizens were incorporated into the newly formed Maharashtra state.

On June 23, 1957, the Indian government constituted the Mahajan Committee to decide on the reorganisation of Belagavi. The four-member Committee consisted of two representatives from Maharashtra and two from Mysore. However, it failed to reach an agreement.

It all started when Maharashtra leader Senapati Bapat started a hunger strike demanding that the government form a commission to address the border dispute. At Maharashtra's insistence, the government constituted the Mahajan Commission on October 25, 1966. VP Naik, Maharashtra's CM, announced on November 9, 1967, that the state would adhere to the Mahajan Commission's report, regardless of the outcome. The Commission, headed by the third chief justice of India, Meher Chand Mahajan, recommended the exchange of several villages in Belagavi district between the two states, but rejected Maharashtra's claim on Belgaum city.

The Commission received 2,240 memoranda and interviewed 7,572 people before submitting its report. Maharashtra had asked for 814 villages besides Belagavi and was given 262 villages, including Nippani, Khanapur and Nandgad. Mysore State had claimed 516 villages, of which Maharashtra admitted that 260 were Kannada-speaking ▶

CONTENTIOUS ISSUE

Assam and Meghalaya have a longstanding dispute in 12 stretches of their 884-km shared border. The chief ministers of both the states recently held the first-ever meeting on the border dispute

ones. Mysore was awarded 247 villages including the claim to Solapur.

Maharashtra and Kerala rejected the report of Mahajan Commission and demanded a review. Maharashtra insisted that the report was against the wishes of the people of Belgaum, while Kerala refused to hand over Kasaragod to Karnataka. Karnataka continued to refuse either the implementation of the report or the maintenance of *status quo*. The Mahajan Commission, however, said that its decisions on the border dispute were not based on the number of Marathi schools and students in Belagavi.

Important to this issue was the Maharashtra Ekikaran Samiti (MES), which was founded in 1948 with the sole objective of ensuring that Belagavi becomes part of Maharashtra. The first Belagavi City Corporation (BCC) elections were held in December 1983. The MES-dominated BCC urged for the transfer of Belgaum to Maharashtra in 1990, 1996 and 2001. More than 250 MES-dominated gram and taluk panchayats, and some other municipalities (such as neighbouring Khanapur) passed similar commitments. In 1986, the dispute led to violence and large-scale firebombing.

On October 27, 2005, the MES-controlled BCC, passed a resolution requesting Karnataka and the Supreme Court to merge the disputed border areas in the districts of Belagavi (including Khanapura, Nippani and Belagavi city), Uttara Kannada (including Karwar and Haliyal) and Bidar (including Bhalki, Aurad and Basavakalyan) with Maharashtra.

The entire opposition boycotted the meeting. On November 10, the mayor was served a show cause notice by Karnataka asking why the resolution should not be cancelled under Section 98 and 99 of the Karnataka Municipal Corporation Act. On November 1, the government cancelled the resolution without waiting for the mayor's reply. On November 17, it served another notice that sought an explanation from the mayor as to why the BCC should not be dissolved under Section 99 of the KMC Act.

After the BCC was dissolved, the MES said that it would challenge the move in the Karnataka High Court, claiming that it disfavoured Marathi-speaking people. The BCC was dissolved on several grounds, including passing a resolution seeking the merger of Marathi-speaking areas in the border district with Maharashtra.

In December 2005, attempts were also made by the centre to re-initiate discussions on the dispute between the CMs of both states and Prime Minister Manmohan Singh. This effort proved fruitless as Karnataka continued to press for the implementation of the report and Maharashtra continued to stake its claim on Belagavi and a few other

In 2010, the Union in its affidavit stated that the transfer of certain areas to then Mysore (now Karnataka) was neither arbitrary nor wrong. It also pointed out that both Parliament and the centre had considered all relevant factors while considering the State Reorganisation Bill, 1956, and the Bombay Reorganisation Bill, 1960. And therein hangs a tale.

parts of Karnataka.

Finally, on March 15, 2006, Maharashtra filed a petition in the apex court, staking claim over Belagavi City. The state claimed that the 865 disputed villages, including Belagavi, be placed under the central government's rule until the Supreme Court's final verdict.

On September 25, 2006, Karnataka convened a five-day assembly session (for the first time outside Bengaluru), in Belagavi to assert its hold over the city. The state government declared that Belagavi would be made Karnataka's second capital, but subsequently, the state home minister denied it. The assembly unanimously adopted a resolution, endorsing the Mahajan Commission report which declared Belagavi a part of Karnataka.

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But this border dispute is not the only one in India. The others are as follows:

Assam-Mizoram: In 1933, a notification defined an Inner Line or Boundary Line between Assam and Lushai Hills district (Mizoram). The North-Eastern Areas (Reorganisation) Act, 1971, defines the boundary between both states in independent India. This is based on the 1933 notification. In 1972, Mizoram was whittled out of Assam as a Union Territory. Following the Mizoram Peace Accord in 1987, it became a state. Initially, Mizoram accepted the border with Assam, but following encroachment, it started disputing the border.

The 1875 notification differentiated Lushai Hills from the plains of Cachar and the other demarcated boundary between Lushai Hills and Manipur. Assam, on the other hand, wants the boundary defined in 1986 (based on the 1933 notification).

Assam-Meghalaya: Both states have a dispute in 12 stretches of their 884-km shared border. The dispute was worsened by disagreements related to the Assam Reorganisation (Meghalaya) Act of 1969. The chief ministers of both the states recently held the first-ever meeting on the border dispute.

Assam-Nagaland: This dispute has a decades-old history which was exacerbated by the creation of Nagaland as a separate state in 1963. Territorial claims of Nagaland in Assam include parts of Golaghat district, Jorhat district and Sibsagar district in the Disputed Area Belt (DAB). Both Assam and Nagaland abide by informal practices in the DAB.

Assam-Arunachal Pradesh: The boundary dispute here arose after the establishment of Arunachal Pradesh as a Union Territory in 1972. In April 1951, on the recommendation of the Bordoloi Committee, 3,648 sqkm of the plain area comprising Darrang, Dhemaji and Jonoi districts was transferred to Assam.

Haryana-Himachal Pradesh: Parwanoo region has been the centre point of the dispute. It is next to Panchkula district of Haryana and Haryana has claimed parts of the land in Himachal Pradesh as its own. The row over boundaries at Sarchu between Himachal and its neighbours arose for the first time in July 2014 when the J&K Police set up its post at Sarchu.

Himachal Pradesh-Ladakh: Both have laid claim to Sarchu, an area on the route between Leh and Manali. Sarchu is between Himachal's Lahul and Spiti district and Leh district in Ladakh. In 2016, a team of the Surveyor General of India visited the disputed border in the presence of high officials from both sides. ■

—By Shivam Sharma and India Legal Bureau

MIGRANT VOTES

The Election Commission of India says it has developed a prototype for a Multi-Constituency Remote Electronic Voting Machine which would enable remote voting by migrant voters. The move is long overdue

THE Election Commission of India (ECI) has invited all national and state political parties on January 16 to demonstrate the functioning of the prototype for a Multi-Constituency Remote Electronic Voting Machine for migrant voters. The Technical Expert Committee members will also be present. The ECI has also solicited written views from recognised political parties on various issues related to the move, including changes required in legislation, changes needed in administrative procedures and voting method/RVM/technology.

Based on the feedback received from various stakeholders and demonstration of the prototype, the ECI will carry forward the process of implementing remote voting methods. The ECI said that in association with a public sector undertaking, it was now ready to pilot a Multi-Constituency Remote Electronic Voting Machine for facilitating participation of domestic migrants from their remote locations in voting for their home constituencies. This modified form of EVM can handle up to 72 multiple constituencies from a single remote polling booth.

The ECI further said that "the initiative, if implemented, can lead to a social transformation for the migrants and connect with their roots as many times they are reluctant to get themselves enrolled at their place of work for various reasons, such as frequently changing residences, not enough social and emotional connect with the issues of area of migration, unwillingness to get their names deleted in electoral roll of their home/native constituencies as they have permanent residence/property, etc."

RIGHT TO VOTE
The move to introduce Multi-Constituency Remote Electronic Voting Machine (inset, for representation only) for migrant workers comes on the back of acknowledgement by the Election Commission that there is migration-based disenfranchisement

A concept note has been circulated among political parties highlighting the challenges of defining domestic migrants, implementation of the model code of conduct, ensuring secrecy of voting, facility of polling agents for identification of voters, process and method of remote voting and counting of votes, among other issues.

The ECI stated that migration-based disenfranchisement is not an option in the age of technological advancement. It said that the voter turnout in the 2019 general elections was 67.4% and the ECI is concerned about the issue of over 30 crore electors not exercising their franchise and also differential voter turnout in various states/UTs.

The ECI in its statement said that it is understood that there are many reasons for a voter not opting to register at a new place of residence, thus missing out on exercising the right to vote. Inability to vote due to internal migration (domestic migrants) is one of the prominent reasons to be addressed to improve voter turnout and ensure participative elections, the ECI said.

Although there is no central database available for migration within the country, the analysis of available data in the public domain points to work, marriage and education-related migration as important components of domestic migration. Migration is predominant among the rural population and approximately 85% of the internal migration is within states.

Soon after assuming office as chief election commissioner, Rajiv Kumar learnt about issues related to domestic migration firsthand from his trek to Dumak village in Chamoli district. Thereafter, he focused his attention on enabling migrant voters to exercise their franchise from their current place of residence.

"Realising such empowerment would entail a host of legal, statutory, administrative and technological interventions, the ECI team has deliberated at length to find inclusive solutions to facilitate electoral participation of migrants across all socio-economic strata and explored alternative voting methods like two-way physical transit postal ballots, proxy voting, early voting at special Early Voting Centres, one-way or two-way electronic transmission of postal ballots (ETPBS), Internet-based voting system, etc.

"With the objective of finding a technological solution which is credible, accessible and acceptable to all stakeholders, the ECI headed by the chief election commissioner along with Election Commissioners Anup Chandra Pandey and Arun Goel has now explored the option of using a modified ▶

The Election Commission said that "the initiative, if implemented, can lead to a social transformation for the migrants and connect with their roots as many times they are reluctant to get themselves enrolled at their place of work for various reasons..."

Former Chief Election Commissioner Dr SY Quraishi said that the remote electronic voting system of the Election Commission is a great initiative and the decision to invite political parties to demonstrate a prototype of the remote EVM is a very good step.

version of the time-tested model of M3 EVMs to enable domestic migrants to vote at remote polling stations outside their home constituencies. The migrant voter would thus need not travel back to his/her home district to exercise his/her franchise of voting," the ECI's statement said.

The ECI has sent letters to all political parties in which it is stated that India is the world's largest democracy. The Constitution provides universal adult suffrage to its citizens, as enshrined in Article 326 of the Constitution, irrespective of race, religion, gender and economic status. A good measure of an established democracy, *inter alia*, is registration of all eligible citizens as electors and maximum participation of electors in voting.

Despite the increase in electoral registration and voters, the concern of stagnant participation is manifest. In effect, one third of the voters do not vote. In other words, approximately one out of every three voters do not participate in the direct electoral process of exercising his or her vote. This translates to a high figure of about 30 crore voters.

The ECI says it is committed to its goal of "no voter to be left behind". For enhancing voter facilitation, the ECI has been taking various measures like providing assured minimum facilities at polling stations, extending voter awareness through various flagship SVEEP activities, providing postal ballots to various categories of voters, including service voters, providing home voting facilities for senior citizens (80+ years of age) and persons with disabilities—all aimed at improving voter participation during elections. The ECI is also focussing on youth, urban apathy and geographical constraints.

The Commission has always been concerned about the issue of about 30 crore electors not exercising their franchise and differential voter turnout in different states/UTs. It understands that there are multifarious reasons for a voter not exercising franchise. Among the many reasons like urban apathy and youth apathy, the inability to vote due to internal migration (domestic migrants) is also a prominent reason contributing to low voter turnout.

It is pertinent to mention that there are enough provisions in electoral laws to let people vote at their place of "ordinary residence" by way of enrolling themselves in the electoral rolls of their place of ordinary residence, with protection from deregistration due to "temporary absence". The migrants, however, are generally reluctant to get themselves enrolled at their place of work for various reasons, including unwillingness to get their names deleted in the electoral rolls of their home/native constituencies where they have permanent residences. The legal construct of any constituency is territorial and based on the place of ordinary residency.

The letter from the ECI also mentioned that the Supreme Court's order in *Dr Shamsheer VP versus Union of India* on the matter of alleged denial of voting opportunities to domestic migrants had prompted the poll body to explore options of remote voting for domestic migrants.

Former Chief Election Commissioner Dr SY Quraishi said that the remote electronic voting system of the ECI is a great initiative and the decision to invite political parties to demonstrate a prototype of the remote electronic voting machine is a very good step. He also said that it is a great initiative because the issue of migrant voters was pending for a long time and observed that if the ECI finds an electronic solution, it will be a very good achievement. He added that the most important thing is that the ECI is completing the process in a democratic way. ■

—By Adarsh Kumar and India Legal Bureau

Shantanu Mitra

UNFORMED CIVIL CODE

The concept has been revived in recent times with a new bill which envisages the setting up of a committee to examine the issue. The code has enormous implications for religious minorities. Freedom of religion is the core of our culture. Even the slightest deviation can undermine the social fibre

By Shaan Katari Libby

MOST countries—France, the UK, the US, Australia, to name a few—mandate that whatever religion you practice, you also abide by the laws of the land you reside in—civil laws and criminal laws—regardless of your citizenship and faith. One could liken it to any educational institution, where everyone has to follow certain rules regardless of their individual backgrounds or beliefs.

If done sensitively, the implementation of a uniform civil code (UCC) encourages uniformity and consistency in the judicial system, providing a common set of values, civil laws, streamlining the legal system and removing the burden of maintaining different religious legal systems. India has done remarkably well to date by keeping all these systems in place. It has, however, caused inequality and discrimination as also cherry picking of convenient laws by those who wish to play the system.

Speaking as a completely secular Indian, hailing from a mixed background (a Muslim mother and a Hindu father, and now married to a Christian)—I strongly believe that we do need to come under one umbrella of laws. The State should have nothing to do with religion—keeping religion far away from politicians should be the goal, and hence having a UCC that is clear and transparent and has taken into account the *status quo* as best it can, would be a panacea.

Let us look at some of the thinking of those who actually wrote the Constitution of India: The UCC appears in Article 44 under Part IV of the Directive Principles of State Policy in the Constitution—stating that the State shall endeavour to secure for citizens a UCC throughout the territory of India.

"I personally do not understand why religion should be given this vast, expansive jurisdiction, so as to cover the whole of life and to prevent the legislature from encroaching upon that field." said BR Ambedkar in a discussion on implementing a UCC during a Constituent Assembly debate. He even envisioned a (rather impractical) voluntary code as well, lest a UCC was to upset sections of society, namely Muslim leaders: "It does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future Parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary."

On December 2, 1948, Ambedkar said during a lengthy discussion on Article 13 of the draft Constitution dealing with the fundamental right to profess any faith that "it is quite impossible for anybody to conceive that the personal law shall be excluded from the jurisdiction of the State". "We have this liberty in order to reform our social system, which is so full of inequities, so full of inequities, discrimination and other things which conflict with our fundamental rights."

Support for a UCC has been forthcoming by academics and the courts alike. Dr Tahir Mahmood in his book "Muslim Personal Law" (1977 edition, pages 200-202), has made a powerful plea for framing a UCC for all citizens of India. He says: "In pursuance of the goal of secularism, the State must stop administering religion based personal laws". He wants the lead to come from the majority community, but, we should have thought that, lead or no lead, the State must act.

In the case of *Mohd. Ahmed Khan vs Shah Bano Begum And Ors* (1985), Justice Chandrachud said: "It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that 'The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India'. There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law."

Support for such a code was then reiterated: "A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies." The Supreme Court decided that as per Section 125 in the Code of Criminal Procedure, 1973, dealing with orders for maintenance of wives, children and parents, Shah Bano must be provided ▶

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—BR Ambedkar, in a discussion on implementing a uniform civil code during a Constituent Assembly debate

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—then CJI YV Chandrachud in *Mohd. Ahmed Khan vs Shah Bano Begum And Ors (1985)*

with living expenses. The then Chief Justice YV Chandrachud said that UCC would end the dissimilarities in the Indian law which would help in establishing national unity. Hence, the Supreme Court had directed Parliament to make law related to a UCC.

In the case of *Smt. Sarla Mudgal, President and Other vs Union Of India & Ors* (1995 SCC (3) 635), the Supreme Court urged the government to secure a UCC based on the model of the Hindu code to protect the abused and achieve national solidarity. This was a batch of four cases—all concerning conversion to Islam in order to take a second wife. It was held by Justice Kuldip Singh that: "A Hindu marriage solemnised under the Act can only be dissolved on any of the grounds specified under the Act. Till the time a Hindu marriage is dissolved under the Act none of the spouses can contract a second marriage. Conversion to Islam and marrying again would not, by itself, dissolve the Hindu marriage under the Act. The second marriage by a convert would therefore be in violation of the Act and as such void in terms of Section 494 IPC. Any act which is in violation of mandatory provisions of law is per-se void.

The real reason for the voidness of the second marriage is the subsisting of the first marriage which is not dissolved even by the conversion of the husband. It would be giving a go-bye to the substance of the matter and acting against the spirit of the statute if the second marriage of the convert is held to be legal."

It was also mentioned that: "Successive Governments till-date have been wholly remiss in their duty of implementing the constitutional mandate under Article 44 of the Constitution of India."

A request to the government of India was made to have a fresh look at Article 44 of the Constitution of India and "endeavour to secure for the citizens a uniform civil code throughout the territory of India".

Answering the questions posed: "the second marriage of a Hindu-husband after conversion to Islam, without having his first marriage dissolved under law, would be invalid. The second marriage would be void in terms of the provisions of Section 494 IPC and the apostate-husband would be guilty of the offence under Section 494 IPC."

"The political history of India shows that during the Muslim regime, justice was administered by the Qazis who would obviously apply the Muslim Scriptural law to Muslims, but there was no similar assurance so far litigations concerning Hindus was concerned. The system, more or less, continued during the time of the East India Company, until 1772 when Warren Hastings made regulations for the administration of civil justice for the native population, without discrimination between Hindus and Mohammedans. The 1772 regulations followed by the regulations of 1781 whereunder it was prescribed that either community was to be governed by its "personal" law in matters relating to inheritance, marriage, religious usage and institutions.

"So far as the criminal justice was concerned, the British gradually superseded the Muslim law in 1832 and criminal justice was governed by the English common law. Finally, the Indian Penal Code was enacted in 1860. This broad policy continued throughout the British regime until independence and the territory of India was partitioned by the British rulers into two states on the basis of religion.

"Those who preferred to remain in India after the partition, fully knew that the Indian leaders did not believe in two-nation or three-nation theory and that in the Indian

Republic there was to be only one Nation—Indian nation—and no community could claim to remain a separate entity on the basis of religion. It would be necessary to emphasise that the respective personal laws were permitted by the British to govern the matters relating to inheritance, marriages, etc., only under the Regulations of 1781 framed by Warren Hastings. The Legislation—not religion—being the authority under which personal law was permitted to operate and is continuing to operate, the same can be superseded/supplemented by introducing a uniform civil code. In this view of the matter no community can oppose the introduction of uniform civil code for all the citizens in the territory of India."

In the case of *Lily Thomas vs Union of India and ABC vs The State* on 5 April, 2000 (NCT of Delhi) (2000) 6 SCC 224—here again, the husband converted to Islam solely for the purpose of remarrying. He threatened his first wife with having to live with his second wife if she did not accept the mutual consent divorce offered. He did not practice the Muslim rites nor did he change his name or religion and other official documents. The petitioner asserted that her fundamental rights had been compromised—as guaranteed by Article 15(1) not to be discriminated against on the ground of religion and sex alone, and that she has been discriminated against by that part of Muslim Personal Law.

Justice Sagir Ahmad pronounced the order stating: Considering the law laid down by Chagla, J. in *Robasa Khanum vs Khodadad Irani* case, where it was held that the conduct of a spouse who converts to Islam has to be judged on the basis of the rule of justice and right or equity and good conscience. A matrimonial dispute between a convert to Islam and his or her non-Muslim spouse is obviously not a dispute "where the parties are Muslims" and, therefore, the rule of decision in such a case was or is not required to be the Muslims Personal Law". In such cases, the Court shall act and the judge shall decide according to justice, equity and good conscience. Hence "The second marriage of a Hindu husband after embracing Islam being violative of justice, equity and good conscience would be void on that ground also and attract the provisions of Section 494 IPC."

Also, assuming that a Hindu husband had a right to embrace Islam as his religion, he had no right under the Act to marry again without getting his earlier marriage under the appropriate Act dissolved. Without so doing the second marriage after conversion to Islam would, thus, be in violation of the rules of natural justice and void with the second wife being a concubine and children illegitimate.

Besides deciding the question of law regarding the interpretation of Section 494 IPC, one of the judges (Kuldeep Singh, J) after referring to the observations made by this Court in *Mohd. Ahmed Khan vs Shah Bano Begum and Ors* requested the Government of India through the prime minister to have a fresh look at Article 44 of the Constitution of India and "endeavor to secure for the citizens a uniform civil code throughout the territory of India". In that behalf, direction was issued to the Government of India, Secretary, Ministry of Law and Justice, to file an affidavit of a responsible officer indicating therein the steps taken and efforts made towards securing a UCC for the citizens of India.

On the question of a UCC, RM Sahai, the other judge constituting the Bench suggested some measures which could be undertaken by the government to check the abuse of religion by unscrupulous persons, who under the cloak of conversion were found to be ▶

Certain steps have already taken place towards establishing a uniform civil code. The decision to implement the Juvenile Justice (Care and Protection of Children) Act, 2015, permits Muslims to adopt children—something that is not possible under Muslim personal law.

In the case of *Smt. Sarla Mudgal, President and Other vs Union Of India & Ors* (1995 SCC (3) 635), the Supreme Court urged the government to secure a uniform civil code based on the model of the Hindu code to protect the abused and achieve national solidarity. This was a batch of four cases—all concerning conversion to Islam in order to take a second wife.

otherwise guilty of polygamy. It was observed that: Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fibre. It was further remarked that: "The Government would be well advised to entrust the responsibility to the Law Commission which may in consultation with the Minorities Commission examine the matter and bring about a comprehensive legislation in keeping with the modern day concept of human rights for women."

In the case of *John Vallamattom & Anr. vs Union of India* (2003) 6 SCC 611 , the Supreme Court declared Section 118 of the Indian Succession Act, 1925, unconstitutional. Justice Khare said: "It is mentioned in Article 44 that the State of India will strive to provide Uniform Civil Code to all citizens in its entirety. But it is said that Article 44 as mentioned in the Constitution has not been implemented properly. A Uniform Civil Code would help in establishing national integration by avoiding contradictions on the grounds of ideologies."

Certain steps have already taken place towards establishing a UCC. The decision to implement the Juvenile Justice (Care and Protection of Children) Act, 2015, permits Muslims to adopt children—something that is not possible under Muslim personal law. The Act consolidates and amends the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, herein under and for matters connected therewith or incidental thereto.

Under the UCC, ideal laws will be put forth, which will protect the personal rights of all citizens irrespective of religion, which seems to be the need of the hour. In reality, this is the foundation stone of secularism. Such progressive reforms will not only help to end discrimination against women, but also help in strengthening the secular structure and encourage integrity. While there is penal code in our country which is equally applicable to all without considering the religion, caste and domicile, there is no uniform law in our country with regard to divorce and succession and these subjects are controlled by the personal laws.

The Uniform Civil Code in India Bill, 2018, was proposed by MP Chandrakant Khaire. He is a member of the Shiv Sena from Aurangabad. The Bill proposes to provide for the constitution of a National Inspection and Investigation Committee for preparation of UCC and its implementation throughout the territory of India. It envisions a common civil code or common law for every citizen residing in India, irrespective of religion and caste.

This Committee would be funded to carry out the above task. It would comprise—a chairperson, who has been a retired chief

justice of India, the Union minister of home affairs—ex-officio member, the Union minister of law and justice, one member nominated by the central government having adequate knowledge and experience in law, and one member to be appointed by the central government from the Indian Administrative Service. The term of office of this Committee is three years. This would at first glance appear short for the mammoth task at hand, and there appears to be no staggering in place—i.e. a rolling calendar of replacements so as to pass on the baton in a fluid manner rather than a short sharp shock. The Election Commission by comparison has a six-year term.

The UCC as proposed by this Bill is to be applicable for marriage, divorce, succession, adoption, guardianship and partition of land and assets on all citizens without any discrimination. It seeks to ensure the right to equality as guaranteed under Article 14 and prohibition of discrimination of any citizen on the basis of religion, caste and gender as referred to under Article 15 of the Constitution. A key provision is for gender equality to be implemented under the UCC; and the substitution of the personal laws (laws based on religious texts and traditions) by the UCC.

The Bill sounds logical and in keeping with what the founders of our Constitution had in mind. There are, however, some vague and worrying inclusions such as the following: "If any difficulty arises in giving effect to the provisions of this Act, the Central Government may make such order or give such direction...as may appear to be necessary or expedient for removing the difficulty". These sound like they could be almost draconian in application.

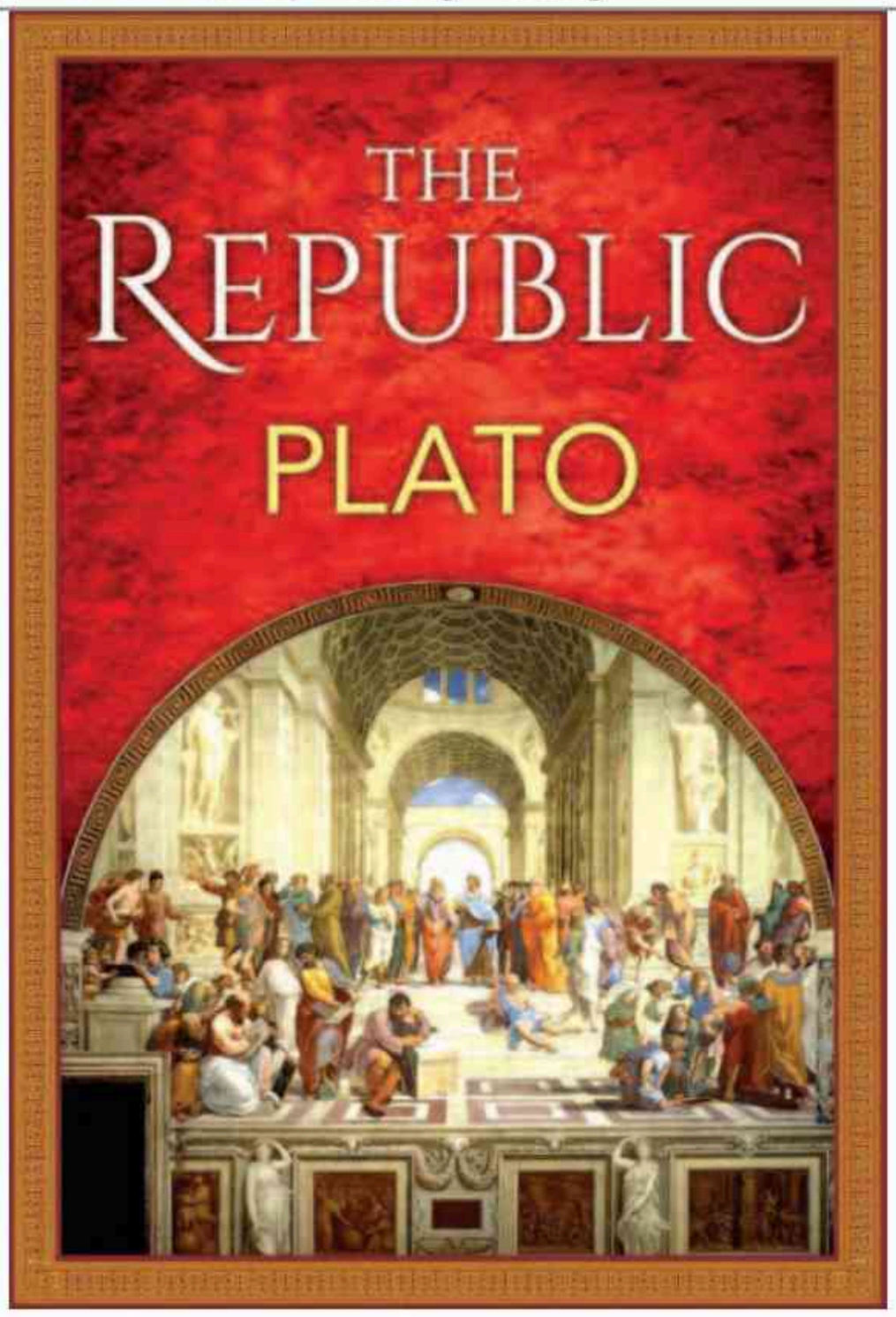
The UCC shall have effect overriding anything inconsistent, via rules that shall be made piecemeal by the central government in order to carry out this Act. Abolishing triple talaq is for instance one such that has already come into force. Another area of potential concern: Every rule made under this Act will come into force immediately, and only then be put before each House of Parliament, while it is in session, and any modifications shall thereafter have effect; however it would not affect the validity of anything previously done under that rule.

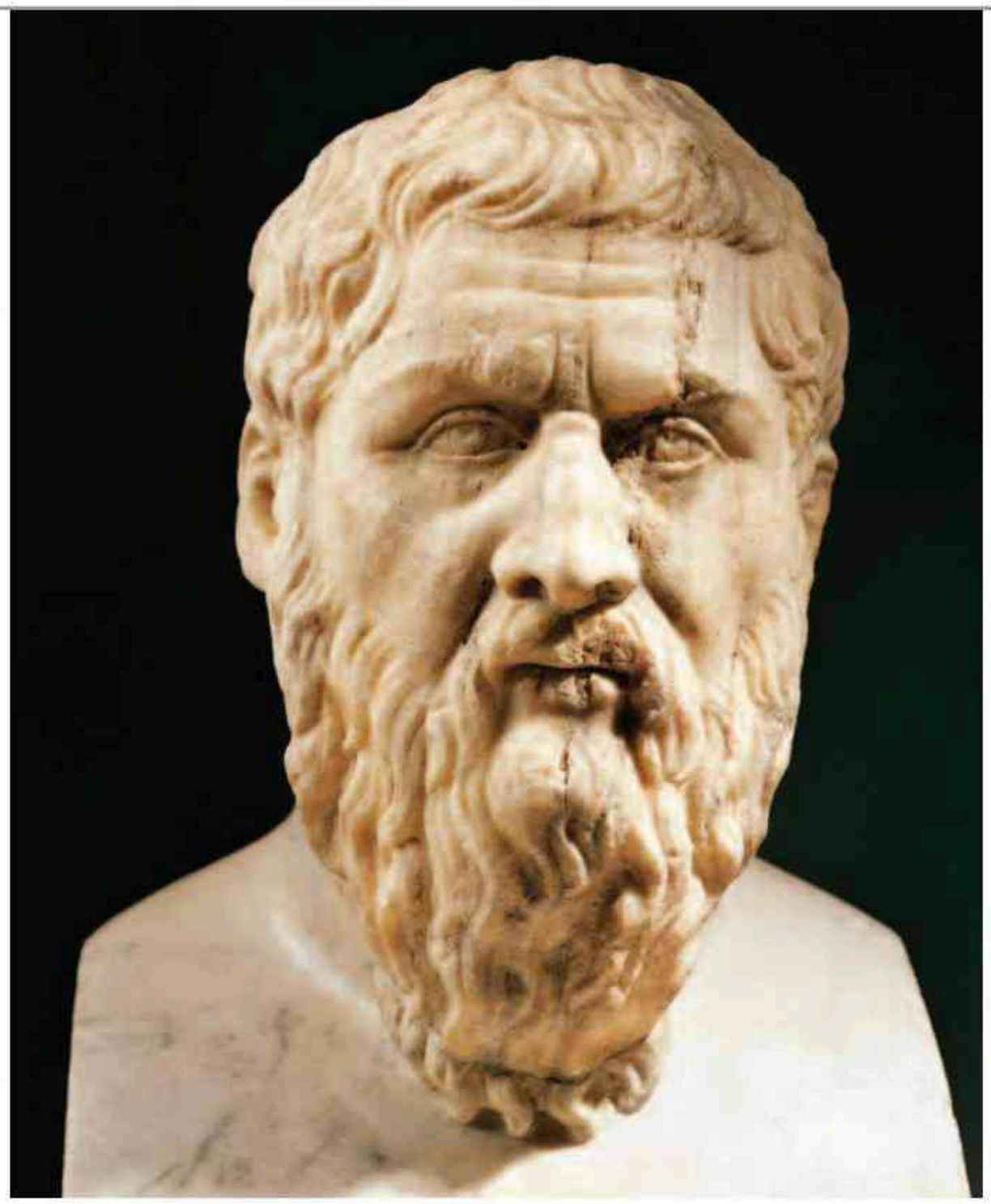
This method sounds disorganized and haphazard. If a rule is to come into force, one would expect it not to take the form of an ordinance, but instead to be ratified by both Houses before it comes into force. Having waited 75 years for the UCC, waiting a little while longer will not be an issue.

To end, the words of Justice Chandrachud in the Shah Bano case are indeed appropriate. There are bound to be "difficulties involved in bringing persons of different faiths and persuasions on a common platform. But, a beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the courts because it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of courts to bridge the gap between personal laws cannot take the place of a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case." ■

Under the uniform civil code, ideal laws will be put forth, which will protect the personal rights of all citizens irrespective of religion, which seems to be the need of the hour. In reality, this is the foundation stone of secularism.

The writer is a barrister-at-law, Honourable Society of Lincoln's Inn, UK, and a leading advocate in Chennai. With research inputs by Sreya K, advocate, and Mahesh P Sudhakaran





LA DOLCE VITA

Will we reach the promised land if luxury leads the way? Have Plato's healthy cities become a myth? The stock markets are singing an old tune

By Sujit Bhar

IN Plato's *Republic*, one of two cities is healthy, the other has "a fever". The latter, said Plato, was the luxurious city. Dwelling on Socratic dialogue, Plato argued that the difference is that the citizens of the latter "have surrendered themselves to the endless acquisition of money and have overstepped the limit of their necessities". Plato's main character Socrates (not his guru Socrates), finds communities in the luxurious city living beyond the natural limits of necessity. He finds the healthy city sustainable, limiting consumption to actual needs, and the luxurious city unsustainable, because it lives beyond its needs.

That was authored in 375 BCE.

Back to today's news: As Tesla stocks tanked over the last couple of weeks, CEO Elon Musk lost nearly $200 billion of his wealth, a world record. That brought back to the top of the pile, as the richest man on earth, Frenchman Bernard Jean Étienne Arnault, co-founder, chairman, and chief executive officer of LVMH Moët Hennessy. He had been there before, but, like a good old wine, the stock has matured further.

The luxurious city has not only survived, but has grown beyond the expectation of all wise minds.

LUXURY MATTERS
Plato's (above right) luxurious city has not only survived, but flourished

Assimilating this within a general social perspective, let us get one thing clear: luxury matters. LVMH Moët Hennessy – Louis Vuitton SE is the world's largest luxury goods company, and Arnault has an estimated net worth of $182.8 billion as of December 2022, according to *Forbes*.

Forget Plato's apparent prescience; flip through any business journal that cares for reality checks, you'll see the world predicting a recession. Switch on any news channel and a possible collapse of the Chinese economy is in sight. Yet, the luxurious city's walls remain high and straight, protecting its communities in cocoons of invulnerability.

According to John V Kulvicki of Dartmouth College, USA: "Luxury has a bad reputation, built on marble and gold, boutique shopping and penthouse suites..." He says this needs a rethink. Luxury, he says, can be separated from "vulgar displays of wealth and power... it is an important aesthetic experience."

Human civilisation, one would tend to believe, has grown beyond the chores of daily needs and towards better living. In fact, LVMH espouses that its "vocation is to ensure" that it can "design, produce and market products and services defined by excellence and the highest quality." Restricting the definition of luxury to that, one might want to bring within this ambit the best products and services today, such as the best MRI machines, the best town water supply system, or even the most efficient public distribution system that transports food grains to exactly where it is needed, at the right time, and at the right price. These are estimates and examples of excellence. Yet, they aren't what we define as luxury.

Hence the LVMH definition isn't exhaustive. Frankly, this is bound to end up as a complicated definition, because the luxury industry is unique. It stands alone amid a sea of goods and services.

Think cars. As is said, there are cars and then there are cars. You can run an empire and family while driving a Toyota Corolla—billionaire investor Warren Buffet does it—or you do the same chores in a Rs 1.3 crore Porsche Cayenne. Both take you from point A to B in decent time and good comfort, but a Corolla is anything but a luxury car. The Corolla performs the same jobs in the healthy city that the Cayenne does within the walls of the luxurious city.

THINK CARS, AGAIN
A car scrapping yard. Now you need new wheels too soon, whether you can afford it or not

Think diamonds. The De Beers' ad promo "A Diamond is Forever" made that particular gemstone a rage and abnormal price tags were invented. You can find industrial diamonds in any diamond cutter tool, but that is workhorse gem, *hoi polloi* of gemstones. That does not take away the superior quality cutting edge these tools produce. Yet, an industrial diamond piece will never be a girl's best friend, no Marilyn Monroe crooning for them.

POWER OF THE PROMO

So, maybe Plato got it wrong, or he did not realise the power of marketing and promotions to communicate brand values, and sell products to a specific target group. Remember how Joseph Goebbels proclaimed the greatness of the Third Reich? He sold a criminal as a saviour of the German race. That is, possibly, political luxury. This narrative has gained currency today, as human brands are assiduously promoted.

Today, all that boils down to 330-400 million consumers of super luxury goods worldwide, as per the Bain report on luxury industry. That is the extent of Plato's luxurious city. The market has grown from just 90 million in 1995. Today almost half of the total number of luxury consumers are in emerging markets, with over 50 million in China alone (pre-pandemic estimates).

One may assume that with such a small market, this industry is of little consequence. Not quite. The power of fiction is often greater than the power of reality. Think ▶

TORCHBEARER OF LUXURY (Top) Bernard Jean Étienne Arnault, co-founder, chairman, and chief executive officer of LVMH Moët Hennessy; the company's headquarters in Paris

Goebbels and his parables of lies. While consumer numbers are low, astronomical unit values make up for the grind. The industry is virtually recession proof, though, during the pre-pandemic recession the global personal luxury market retreated nearly 10% from $172 billion in 2007 to bottom out at $157 billion in 2009, according to Bain's luxury study. It recovered quickly in 2010, though. Then, in 2020, with the pandemic sales fell for a year.

THE LUXURIOUS TRUTH

The sum and substance of this study may be to buff the stigma off the elbows of luxury goods. Maybe luxury is good. There have been rare instances of people who can pay a gazillion for a service, but hesitate. When "they" talk about price gouging, maybe they feel there's a bit unfair in the dealings.

Or, you may come face to face with some from the healthy Indian city, for whom the mere access to justice is a luxury. No matter if that is his fundamental or constitutional right. Would that put our courts within the walls of the luxurious city?

Think cars, again. According to the Bureau of Transportation Statistics (USA), the average age of all light vehicles in operation in the US in 2021 was 12.1 years, though the average age of household vehicles for several years was found to be 15.8 years. That is 0.8 years above scrapping standards in India. Is there a scope of using older cars in India, if all environmental norms are maintained? There are tests prescribed, and more often than not, the 15-year cut-off is final.

Healthy city residents, using his/her Corolla, or even a Maruti Alto, thereby limiting his/her consumption to actual needs, finds, at the end of 15 healthy years, that he/she should buy again. He/she also finds that his/her "needs" have been redefined, without his/her consent, without any concern for his/her financial condition. Where do these changes emanate from, and why? Cars are so well built these days that, with good maintenance, they can serve a person for a long time. How do they run longer in the US?

Such anomalies do not get to strike root in luxurious cities. They have a stronger voice against delayed justice and injustice: they are heard quickly. When they cry out against price gouging, or unfair pricing, they are they are the first to be addressed. Which brings us to the striking fact that luxurious city dwellers may have a better handle on society, on how healthy city residents should access their "needs".

Under certain circumstances there exists the possibility that luxurious city dwellers would want newer cars every now and then, or want quick resolutions to cases and better quality amenities. Remember, these will result in precedent-setting cases, crumbs that healthy city dwellers will benefit from. This is that fabled and mystifying trickledown factor that economists often talk about.

Let luxury lead us to a better quality life. Let the new age subjects of the new age rajahs live a decent, healthy life. Let the Bernard Jean Étienne Arnaults of the world create a better profile for a new age country like India. One day, the Ritu Kumars and Manish Malhotras and Sabyasachis will be the standard bearers of India too, within luxurious and healthy cities. ■

The author writes on legal, economic and corporate issues, apart from social commentary. He is Executive Editor at India Legal

Recession Alert

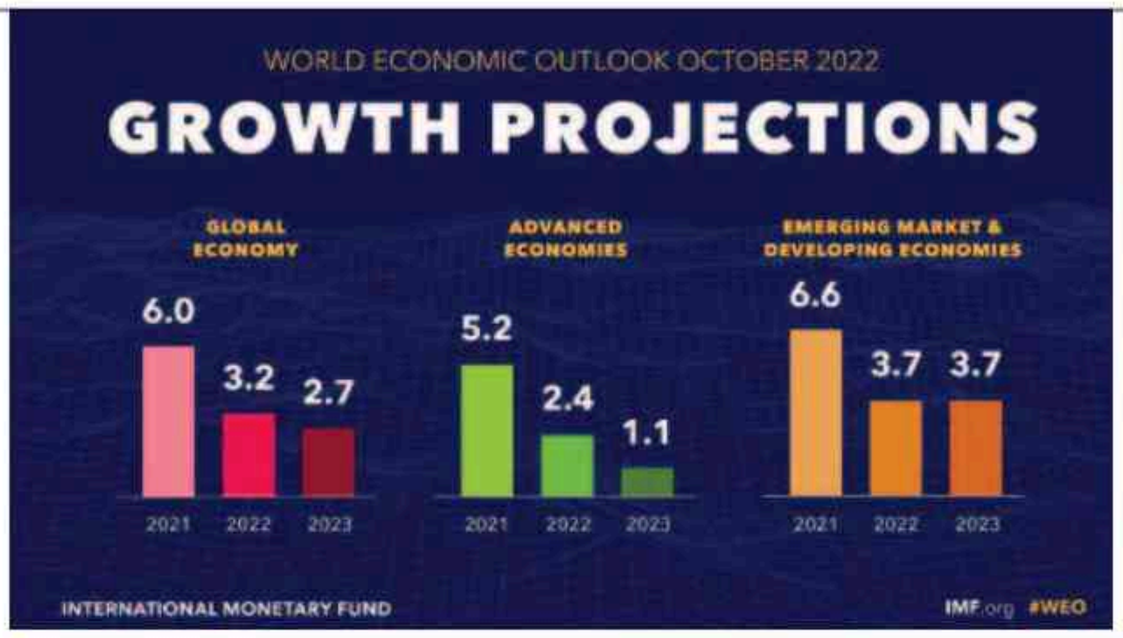
The World Bank says that the global economy will come "perilously close" to a recession this year, led by weaker growth in all the world's top economies—the United States, Europe and China. In its annual report, the World Bank said it had slashed its forecast for global growth this year by nearly half, to just 1.7%, from its previous projection of 3%.

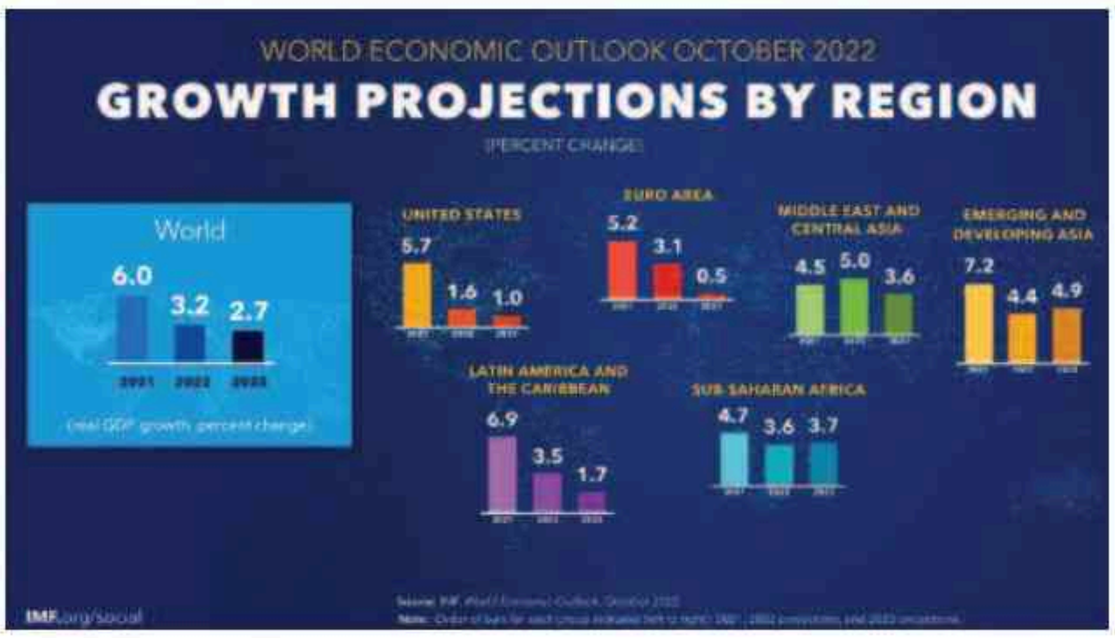
If that happens, it will be the third-weakest annual expansion in 30 years, behind only those following the 2008 global financial crisis and the coronavirus pandemic in 2020.

The Bank has predicted the US economy, the world's largest, will grow at a mere 0.5%. Meanwhile, Europe, a major exporter to China, will also suffer from a weaker Chinese economy. Global food prices will also remain high. "Russia's invasion of Ukraine has added major new costs," World Bank President David Malpass stated.

Similar gloomy predictions have been made by another forecast by the International Monetary Fund, the global lending agency. A statement said: "For most of the world economy, this is going to be a tough year because the three big economies—US, EU, China—are all slowing down simultaneously." The bank expected developing countries like India to fare better.

However, economists at JPMorgan are predicting slow growth this year for the world as a whole, but do not anticipate a global recession.





Tropical Storm

Brazil's former President Jair Bolsonaro has been called the "Trump of the Tropics" for his far-right ideology and similarities to the ex-US president in terms of refusing to accept electoral defeat and urging his supporters to use any means to overturn the declared results. In America, that led to the events of January 6 when Donald Trump followers stormed the US capital.

The same ugly scenario played out last week when Bolsonaro fans stormed key government buildings in the capital Brasilia (below). The targets were Congress, the presidential palace and the Supreme Court. The rioting came a week after President Lula da Silva was sworn in after narrowly defeating Bolsonaro.

Calling the rioters "terrorists", Lula has ordered a crackdown in which hundreds of protesters and officials have been arrested, including Brasilia's former public security chief Anderson Torres and others "responsible for acts and omissions" leading to the riots, the attorney general's office has said. Torres served as Bolsonaro's justice minister. Colonel Fábio Augusto, the police commander, was dismissed from his role. Lula has accused security forces of "neglecting" their duty in not halting the "terrorist acts" in Brasilia. The dramatic scenes saw thousands of protesters, some clad in yellow Brazil football shirts and waving flags, overrun police and ransack the heart of the Brazilian state.

Public prosecutors have asked the federal audit court to freeze Bolsonaro's assets in light of the riots. The former president, who was undergoing medical treatment in Florida, condemned the riots on social media, but has so far not admitted defeat from October's tight election that divided the nation.

A day after the riots, heavily armed officers started dismantling a camp of Bolsonaro's supporters in Brasília—one of a number that have been set up outside army barracks around the country since the presidential election.

China's Challenge

In a major U-turn from its zero-Covid policy, China last week opened up the country to travel and removed Covid-related restrictions and lockdowns that have led to unprecedented protests. Thousands of Chinese citizens have crossed over into Hong Kong while others are catching flights after being grounded for over two years.

But the sudden opening means that the virus is spreading unchecked among its 1.4 billion people and worries over the scale and impact of its outbreak have prompted Japan, South Korea, the United States and other countries to require negative Covid tests from travellers from China. Some governments have raised concerns about Beijing's data transparency as international experts predict at least 1 million deaths in China this year. China has suspended issuing short-term visas in South Korea and Japan after announcing it would retaliate against countries that required negative Covid-19 tests from Chinese travellers.

Satellite images taken over a number of cities captured show lines of vehicles waiting outside funeral homes and crematoriums in a variety of Chinese cities. China's Covid-19 death toll since it eased restrictions is officially only 37 deaths recorded since December 7. As reports of overwhelmed hospitals (right) and funeral homes roll in, China has faced accusations from the WHO and US that it is under-representing the severity of its current outbreak. "We continue to ask China for more rapid, regular, reliable data on hospitalizations and deaths, as well as more comprehensive, real-time viral sequencing," WHO director-general Tedros Adhanom Ghebreyesus said at a news briefing last week.

Unenviable Record

Entrepreneur Elon Musk (right) has established a world record for the largest loss of personal fortune in history. Guinness World Record cited *Forbes*' estimate that Musk had lost around $182 billion since November 2021, but noted that other sources indicate the figure is close to $200 billion.

"Although the exact figure is almost impossible to ascertain, Musk's total losses far surpass the previous record of $58.6 billion, set by Japanese tech investor Masayoshi Son of Softbank in 2000," the Guinness report said.

According to other financial news outlets, Musk's net worth dropped from $320 billion in November 2021 to $137 billion as of January 2023, largely due to the poor performance of Tesla's stock. Musk has sold more than $23 billion worth of Tesla stocks since last April. That sell-off saw him lose his status as the world's richest person to Bernard Arnault, founder of luxury goods conglomerate LVMH (Louis Vuitton Moet Hennessy), who has an estimated net worth of $190 billion. However, many expect the eccentric billionaire to bounce back some time this year.

Golden Moments

Spielberg got the award for *The Fabelmans*

The cast and crew of *The Banshees of Inisherin*

The Golden Globes, which kicks off Hollywood's award season, is back after an enforced hiatus following complaints that the Hollywood Press Association, which hands out the awards, was accused of lack of diversity. Host and comedian Jerrod Carmichael while, welcoming the celebrities to the 80th edition of the Golden Globes, said: "I'm here because I'm Black," joking that the Association "did not have a single Black member until George Floyd died...I was invited to be the Black face of a white organization."

The awardees were quite predictable. The prize for best motion picture, drama, went to Steven Spielberg's semi-autobiographical film *The Fabelmans* while *The Banshees of Inisherin* won for best picture, musical or comedy. It was the most nominated film at the Golden Globes, with eight nods. Colin Farrell won for best actor in the movie.

Cate Blanchett took home the Golden Globe for best actress in a motion picture, drama, for her role as a world-famous composer-conductor in *Tár* while Austin Butler bagged the Golden Globe for best performance by an actor in a motion picture, drama, for his role in the film *Elvis*.

The award for best drama TV series went to *House of the Dragon* while *Abbott Elementary* won the award for best television series, musical or comedy. *The White Lotus* also picked up several awards. Michelle Yeoh won the Golden Globe for best actress in a motion picture, comedy or musical, for her starring role in the psychedelic comedy drama *Everything Everywhere All at Once*.

Naatu Naatu song composer MM Keeravani with the Golden Globe

Kevin Costner won for best performance by an actor in a drama television series for his role as rancher John Dutton in *Yellowstone*. *Argentina, 1985*, a historical drama, took home the award for best picture in a non-English language, while there were great celebrations in India when *Naatu Naatu* from *RRR* won the Golden Globe for best original song, a big win in a category that had nominations like Taylor Swift, Lady Gaga and Rihanna.

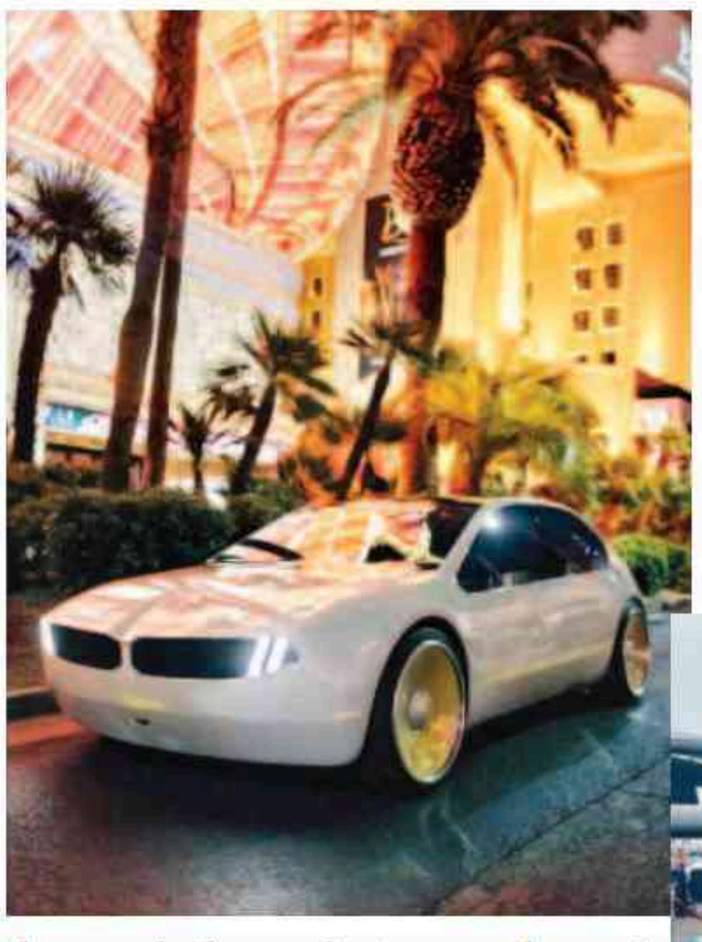
Technology Trends

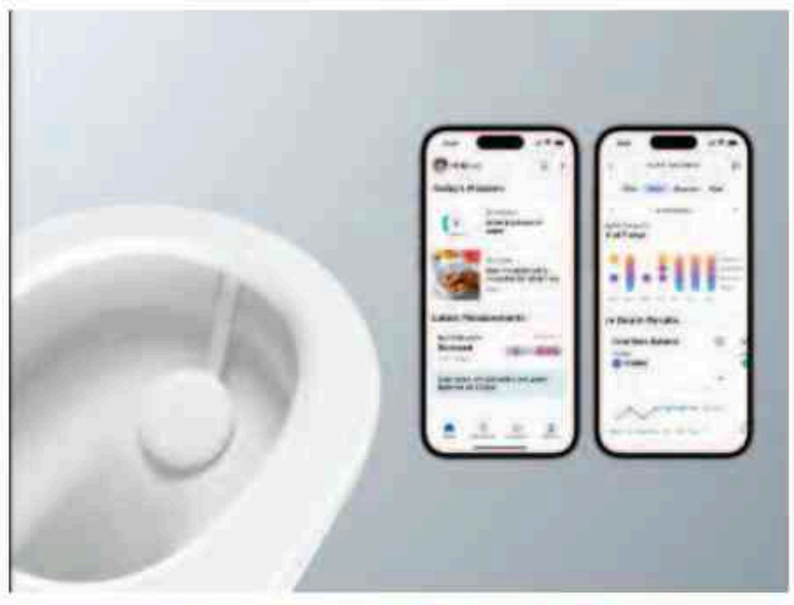
After a two-year lull, the world's biggest tech exhibition, CES, returned to Las Vegas and showcased some remarkable products which included a flying car, an all-electric boat, and a pee sensor for your toilet, among other concepts.

The new technology extended to cars with the BMW i Vision Dee (right), a concept car that features the entire windshield as a screen. It also has an E-Ink cover on its chassis that can change colour based on your preferences.

Car audio experiences took a huge step with the Dolby Atmos technology, surround sound that is totally immersive, and fitted into the deluxe Mercedes-Maybach S-Class.

The star attraction was the Withings U-Scan pee sensor (top right). The device sits at the front of your toilet. When you pee, it collects the urine, analyzes it and then sends the results to your phone via Wi-Fi. It tracks daily vitamin C and pH levels and women can use it to track their menstrual cycles.





A company called Aska revealed its A5 flying car (right). Aska has pre-orders for the $789,000 vehicle which could revolutionize ride-sharing services.